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Canada. Parliament. House of Commons
Standing committee on Justice and legal affairs
Minutes of proceedings and evidence.
1966-67 1967-68
no 1-33 no 1-18

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1-33

No. 1-18

THURSDAY, FEBRUARY 17, 1966

THURSDAY, APRIL 21, 1966

Respecting the subject-matter of

- Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles)
Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles)
Bill C-87, An Act to amend the Criminal Code (Impaired Driving)
Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and
Private Members' Notices of Motions Numbers 26 and 31.

WITNESS:

Mr. Yves Forest, M.P., Sponsor of Bill C-118.

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1966

STANDING COMMITTEE

ON

STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

*Chairman: Mr. A. J. P. Cameron**Vice-Chairman: Mr. Yves Forest*

and

Mr. Aiken,	Mr. Goyer,	Mr. Nielsen,
Mr. Asselin (Charlevoix),	Mr. Honey,	Mr. Otto,
Mr. Bell (Carleton),	Mr. Laflamme,	Mr. Ryan,
Mr. Cantin,	Mr. Langlois (Mégantic),	Mr. Scott (Danforth),
Mr. Choquette,	Mr. Mather,	Mr. Stanbury,
Mr. Chrétien,	Mr. MacEwan,	Mr. Trudeau,
Mr. Fulton	Mr. McQuaid,	Mr. Wahn,
		Mr. Woolliams—(24).

Gabrielle Savard,

Clerk of the Committee.

(Quorum 13)

NOTE: Mr. Scott (Danforth) replaced Mr. Lewis and Mr. Mather replaced Mr. Brewin on April 20, 1966.



ORDERS OF REFERENCE

Monday, February 7, 1966.

Resolved,—That the following Members do compose the Standing Committee on Justice and Legal Affairs:

Messrs.

Aiken,	Forest,	McQuaid,
Asselin (Charlevoix),	Fulton,	Nielsen,
Bell (Carleton),	Goyer,	Otto,
Brewin,	Honey,	Ryan,
Cameron (High Park),	Laflamme,	Stanbury,
Cantin,	Langlois (Mégantic),	Trudeau,
Choquette,	Lewis,	Wahn,
Chrétien,	MacEwan,	Woolliams—(24)

MONDAY, February 21, 1966.

Ordered,—That the subject-matter of each of the following bills be referred to the Standing Committee on Justice and Legal Affairs:

Bill C-16, An Act to provide in Canada for the Dissolution of Marriage (Additional Grounds for Divorce).

Bill C-19, An Act to provide in Canada for the Dissolution and the Annulment of Marriage.

Bill C-41, An Act to amend the British North America Acts, 1867 to 1965, (Provincial Marriage and Divorce Laws).

Bill C-44, An Act to provide in Canada for the Dissolution of Marriage.

Bill C-55, An Act to provide in Canada for the Dissolution of Marriage.

Bill C-58, An Act respecting Marriage and Divorce.

Bill C-79, An Act to amend the Dissolution and Annulment of Marriages Act (Additional Grounds for Divorce).

TUESDAY, March 15, 1966.

Ordered,—That the Order of the House of Monday, February 21, 1966 referring the subject-matter of the following bills to the Standing Committee on Justice and Legal Affairs be discharged:

Bill C-16, An Act to provide in Canada for the Dissolution of Marriage (Additional Grounds for Divorce).

Bill C-19, An Act to provide in Canada for the Dissolution and the Annulment of Marriage.

Bill C-41, An Act to amend the British North America Acts, 1867 to 1965, (Provincial Marriage and Divorce Laws).

Bill C-44, An Act to provide in Canada for the Dissolution of Marriage.

Bill C-55, An Act to provide in Canada for the Dissolution of Marriage.

Bill C-58, An Act respecting Marriage and Divorce.

Bill C-79, An Act to amend the Dissolution and Annulment of Marriages Act (Additional Grounds for Divorce).

WEDNESDAY, March 30, 1966.

Ordered,—That the subject-matter of the following Private Members' Bills, be referred to the Standing Committee on Justice and Legal Affairs:

Bill C-26, An Act to amend the Criminal Code (Safety Devices for Vehicles).

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).

Bill C-87, An Act to amend the Criminal Code (Impaired Driving).

Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles).

Ordered,—That the subject-matter of Private Members' Notices of Motions Numbers 26 and 31, be referred to the Standing Committee on Justice and Legal Affairs.

WEDNESDAY, April 20, 1966.

Ordered,—That the name of Mr. Scott (Danforth) be substituted for that of Mr. Lewis on the Standing Committee on Justice and Legal Affairs.

Ordered,—That the name of Mr. Mather be substituted for that of Mr. Brewin on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, February 17, 1966.

(1)

The Standing Committee on Justice and Legal Affairs met this day at 11.30 a.m. for organization purposes.

Members present: Messrs. Aiken, Asselin (*Charlevoix*), Brewin, Cameron (*High Park*), Choquette, Chrétien, Forest, Fulton, Goyer, Laflamme, Lewis, McQuaid, Otto, Ryan, Stanbury, Trudeau, Wahn (17).

The Clerk attending and having called for nominations, Mr. Otto moved, seconded by Mr. Ryan, That Mr. Cameron be elected Chairman of this Committee.

There being no other nominations, the Clerk declared Mr. Cameron elected Chairman and invited him to take the Chair.

Mr. Cameron thanked the Committee for the honour bestowed upon him and then invited nominations for Vice-Chairman.

Mr. Asselin, seconded by Mr. Trudeau, moved that Mr. Fulton be elected Vice-Chairman of this Committee.

Mr. Chrétien, seconded by Mr. Ryan, moved that Mr. Forest be elected Vice-Chairman of this Committee.

Mr. Fulton asked permission to withdraw his name and by unanimous consent the mover and the seconder nominating Mr. Fulton withdrew their motion.

Mr. Choquette, seconded by Mr. Wahn, moved that nominations be closed. The Chairman declared Mr. Forest elected Vice-Chairman of the Committee.

On motion of Mr. Wahn, seconded by Mr. Choquette,

Resolved,—That a subcommittee on Agenda and Procedure comprised of the Chairman, the Vice-Chairman and three members to be named by the Chairman upon consultation with the Whips of the parties, be appointed.

Mr. Brewin moved, seconded by Mr. Wahn,

That the Chairman be requested (a) to inquire into whether the estimates of the Minister of Justice and of the Solicitor General are automatically referred to this committee, or whether a further motion in the House is required for this purpose, and if this latter (b) to request the appropriate authority to introduce the motion as soon as possible.

After discussion, Mr. Fulton moved in amendment that all the words after *That* be deleted and the following substituted:

The matter of the items and subjects to be referred to this Committee be taken up urgently by the Steering Subcommittee and a report thereon be made by them to the next meeting of this Committee.

The amendment was defeated on the following division: Yeas, 7; Nays, 8.

The question being put on the main motion, it was negatived on the following division: Yeas, 7; Nays, 8.

There being no other business before the Committee, at 11.25 a.m., on motion of Mr. Stanbury, seconded by Mr. Trudeau, the Committee adjourned to the call of the Chair.

Gabrielle Savard
Clerk of the Committee.

THURSDAY, April 21, 1966.

(2)

The Standing Committee on Justice and Legal Affairs met at 11:10 a.m. this day. The Chairman, Mr. A. J. P. Cameron, presided.

Members present: Messrs. Aiken, Bell (*Carleton*), Cameron (*High Park*), Cantin, Choquette, Chrétien, Forest, Laflamme, MacEwan, Mather, McQuaid, Nielsen, Otto, Scott (*Danforth*), Stanbury (15).

In attendance: Mr. Yves Forest, M.P., sponsor of Bill C-118 (An Act to amend the Criminal Code: Negligence in operation of motor vehicle), and Mr. R. R. Southam, M.P., sponsor of Bill C-26 (An Act to amend the Criminal Code: Safety Devices for Automotive Vehicles).

The Chairman read the Committee's Orders of Reference dated March 30, 1966. He then announced the names of the Members who have been designated to act with him on the *Subcommittee on Agenda and Procedure*, namely Messrs. Forest, Brewin, Wahn and Woolliams. He added that Mr. Brewin will be replaced since he is no longer a member of the Committee.

The Chairman then presented the *First Report of the Subcommittee* as follows:

The Subcommittee on Agenda and Procedure recommends:

1. That the Committee meet twice a week, on Thursdays and Fridays at 9:30 a.m., subject to the approval of the Coordinator of Committees.

2. That the Committee hold its next meeting on Thursday, April 21.

3. That the Committee proceed to hear:

- (a) Mr. Forest on Bill C-118; and Mr. Mather on Bill C-87 and on Notice of Motion No. 26 under his name;

- (b) Mr. Southam on Bill C-26 and Mr. Wahn on Bill C-49.

4. That the Committee print 750 copies in English and 500 copies in French of its Minutes of Proceedings and Evidence.

On motion of Mr. Bell (*Carleton*), seconded by Mr. Chrétien,
Resolved,—That the First Report of the Subcommittee on Agenda and Procedure presented this day be adopted.

The Committee proceeded to the consideration of the subject-matter of
Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).

Bill C-87, An Act to amend the Criminal Code (Impaired Driving).

Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and

of Private Members' Notices of Motions Nos. 26 and 31, which read as follows:

No. 26—"That, in the opinion of this House, the government should consider early action to provide or promote legislation having as its aim the inclusion, at the manufacturer's level, of new and effective safety features in motor vehicles produced in or imported into Canada."

No. 31—"That, in the opinion of this House, the government should, as soon as possible, create a Commission or Committee to enquire into the manufacturing of safer motor vehicles and that, subsequently, on production of the report of such Commission or Committee, it should take immediate steps towards the implementation thereof in order to assure that all scientifically proven safety features are incorporated on vehicles produced or imported for use in Canada and in order to halt the senseless and unnecessary slaughter of thousands of Canadians each year on our highways."

The Chairman invited Mr. Forest to explain Bill C-118. Following his remarks, Mr. Forest was questioned.

After discussion, Mr. Scott (*Danforth*) moved, seconded by Mr. MacEwan,

That a copy of Bill C-118 together with a copy of the Minutes of today's Proceedings be forwarded to the Attorneys General of the Provinces and the Attorneys General of the Yukon and the Northwest Territories with a request that they let the Committee have their views upon same.

The motion was adopted on the following division: Yeas—9; Nays—1; Abstentions—3.

At 12.10 p.m. on motion of Mr. Nielsen, seconded by Mr. Bell (*Carleton*), the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee ad hoc.

EVIDENCE

THURSDAY, April 21, 1966.

(Recorded by Electronic Apparatus)

● (11.10 a.m.)

The CHAIRMAN: We now have a quorum, as early in the morning as we have got it. The order of reference, gentlemen, is dated the 30th day of March of this year. It reads:

Ordered—That the subject-matter of the following Private Members' Bills, be referred to the Standing Committee on Justice and Legal Affairs.

Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).

Bill C-87, An Act to amend the Criminal Code (Impaired Driving).

Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles).

It was also ordered:

That the subject-matter of Private Members' Notices of Motions Nos. 26 and 31, be referred to the Standing Committee on Justice and Legal Affairs.

The members of the steering committee as selected in conjunction with the whips of the respective parties are as follows: Myself as Chairman, Mr. Forest, Mr. Brewin, Mr. Wahn and Mr. Woolliams. Mr. Brewin, I take it, will have to be replaced because he is no longer a member of the Committee and Mr. Mather has been appointed in his place; we also have Mr. Scott here this morning who is taking the place of Mr. David Lewis.

The steering committee met and I will read their recommendations. The steering committee recommends:

1. That the Committee meet twice a week on Thursdays and Fridays at 9.30 a.m., subject to the approval of the co-ordinator of committees.

2. That the Committee hold its next meeting on Thursday, April 21.

3. That the Committee proceed to hear: (a) Mr. Forest on Bill C-118, Mr. Mather on Bill C-87 and on Notice of Motion 26 under his name. (b) Mr. Southam on Bill C-26 and Mr. Wahn on Bill C-49.

4. That the Committee print 750 copies in English and 500 copies in French of its Minutes of Proceedings and Evidence.

May I have a motion for the adoption of the report of the steering committee?

Mr. BELL (Carleton): I so move.

Moved by Mr. Bell, seconded by Mr. Chrétien.

Mr. CHRÉTIEN: I second the motion.

Motion agreed to.

The CHAIRMAN: Mr. Forest, we will be very glad to hear from you an explanation of your Bill C-118.

Mr. AIKEN: Mr. Chairman, I wonder if I might ask for a clarification, do we intend to clear up one subject before proceeding to another. I particularly refer to Bill C-118. It is rather a simple bill. The others are rather tied together. Are we going to have a general discussion of all these matters at once, or are we going to try to finish this bill of Mr. Forest's before going on to another group of subjects?

The CHAIRMAN: I have given that the consideration that it is entitled to, Mr. Aiken. The clerk is just directing to my attention to the fact that Bill C-49 relates to dangerous motor vehicles which is relevant to Mr. Forest's bill. My own thought on the matter would be that it would be well to hear Mr. Forest and let him make himself available for questions and explanations of his bill and then reserve our decision on what we want to recommend as to the subject matter of the bill. But that, of course, is in the hands of the Committee.

Mr. AIKEN: Mr. Chairman, I do not think that any of the other bills relate to Bill C-118, which is a very simple matter. It merely relates to the onus of the owner of the motor vehicle involved in a collision and leaving it. I do not think it relates to any of the other matters.

The CHAIRMAN: Well, it is up to the Committee to decide. I can see no reason why we should not deal with it and settle it now, if the Committee can come to an agreement on what they want to do about it.

Mr. SCOTT (*Danforth*): In looking over the bills, I agree with Mr. Aiken that Bill C-118 does not really touch the big subject into which we are heading, which is the full problem of automobile safety in Canada, which is quickly becoming one of the major issues in North America. I was wondering what the view of the Chair was; perhaps I should reserve comments until after you have dealt with Bill C-118. It seems to me that the subject matter is so wide and so important that just hearing the sponsors of the bill is not going to get anywhere near catching the real essence of the problem with which we are faced. If the steering committee has not considered that, maybe I can reserve my remarks until after Bill C-118 has been dealt with.

The CHAIRMAN: As you say, it is a very big subject. The question of safety appliances and the law in relation to them in the manufacture of automobiles is a very wide subject. Just how far we should get into them as a Committee I do not know. There have been a lot of hearings going on in different parts of Canada. I notice in the *Globe and Mail* this morning that the government have some plan regarding safety factors in their automobiles, and I am sure Mr. Grafftey, Mr. Mather and the other witnesses will have a lot to say about it. Just how far are we going to go in the matter? We can go into the safety appliances on automobiles and the law to be applied to manufacturers who fail to instal such appliances.

You are opening up a very, very big subject, and I think the steering committee should consider it and decide just what they recommend to the Committee as a whole to do.

Mr. SCOTT (*Danforth*): I would hope that yourself and the Committee would take as wide a view as possible of the activities of the Committee itself in this area; because it is important and it is something that we are going to have to look into pretty thoroughly and come up with some recommendations, notwithstanding the fact that the press release you have referred to seems to indicate that the government is going to go ahead on its own hook even while we are meeting.

The CHAIRMAN: That applied only so far as I read, the press release, to motor vehicles owned by the government. It was not a general application, although other people might follow it.

Mr. SCOTT (*Danforth*): And so interpret the report; but we can comment on it later.

The CHAIRMAN: Are there any further comments on this matter we are discussing?

Mr. FOREST: Bill C-87 is the same; it does not concern safety of motor vehicles; it is impaired driving, blood count, and Bill C-118 is the same. It does not concern, the general matters; the other bills concerns safety in motor vehicles.

The CHAIRMAN: Well, I think, Mr. Forest, we will just deal with yours now, if you will tell the Committee what you would like to say about it.

Mr. FOREST: Mr. Chairman, gentlemen, Bill C-118 is not very complicated, it is quite simple. It proposes an amendment to Section 221 of the Criminal Code, paragraph 2, which deals with what we generally call hit and run cases. Its purpose is to strengthen the law and to remove what I would call the inadequacy of the existing legislation to deal with the appalling and growing number of hit and run cases in recent years.

I have no exact statistics right now to give to you; I put a question on the order paper a few weeks ago, in March, asking for the number of such offences in Canada, in the Province of Quebec, et cetera, and the number of persons that were killed or injured during such accidents, and the average number of sentences in relation to the total number of such accidents during the period of 1960 to date. I have had no reply up to now. The information I have indicates that in the city of Montreal alone, during 1964, there were over 4,000 hit and run cases that were reported to the police and prosecutions could be taken only in about 700 cases owing to the difficulty of identifying the guilty persons.

I think in your own experience, and mine also, as a lawyer, we have had quite a few of these cases and we are aware of the evil done, the misery of the victims who have often been left, and the difficulty of presenting evidence against the guilty motorist.

In recent years, as far as civil damages are concerned, especially in the provinces of Quebec and Ontario where they have the Unsatisfied Judgment Fund, and in the province of Quebec the Motor Vehicle Victim Indemnity Fund,

it has not been so bad, since they can claim most of their damages, but I do not think that this applies all through Canada, nor have all the provinces such provisions in their statutes.

At any rate, I do not think it is sufficient reason, to let the guilty person go unpunished, or scot free. As the law stands now, there can be no action taken against the driver unless he can be positively identified as the driver of the vehicle at the time of the mishap. This may happen, and even if, for example, an eye-witness, or a person saw the incident take place and reported the registration number of the car, it is not sufficient.

The terms of this amendment as drafted may not be quite satisfactory. My own amendment was not quite like this, but after discussion with Dr. Ollivier, the Law Clerk, he suggested that it be drafted this way. In the first part it provided that in any case where it has not already been established who has the care, charge, or control of such vehicle, we should add the person who is registered as the owner. He added that proviso which I thought was not necessary. Naturally if the Crown knows who it is, they will sue the person; otherwise they could sue the owner of the vehicle and then there would be a presumption that could be rebutted, what we call a *juris tantum* presumption that could be rebutted by the owner of the vehicle.

Maybe the eminent lawyers of this Committee would have a better suggestion of how exactly to draft this amendment to render this section of the Criminal Code more binding and more effective in order to have a better chance of convicting those guilty persons.

I am personally convinced that if the Criminal Code were amended to make the ownership *prima facie* evidence that this person had the care, charge or control of the vehicle, the work of the police would be much more effective.

Now, the question that it raises is—

Mr. AIKEN: I do not like to interrupt, but the one point that I do not like about the bill is the use of the word deemed. Now you have just finished using the words *prima facie* evidence and there is a good deal of difference. I wonder if you could explain it.

Mr. FOREST: *Prima facie* would be going a bit too far. It is just to create a simple presumption, we deem, that can be rebutted by the owner of the vehicle. This is the question: would it impose undue hardship on the owner in such cases? I think this is what we have to worry about.

Mr. BELL (Carleton): It is not, with respect, what the bill says. If the bill simply created a presumption, I think we could go along with it. But this creates an absolute obligation which the owner has no power to overcome.

Mr. FOREST: But suppose he were sued, he could naturally rebut the presumption.

Mr. BELL (Carleton): He is not under this draft; I think that is the problem.

Mr. NIELSEN: The bill says shall be presumed to have been.

Mr. FOREST: The intention was to create the simple presumption. That is the way I understood Dr. Ollivier. In this way it would create a simple presumption. Maybe you are not of the same opinion. Perhaps we could change

the words to go not quite so far as this intends to, or seems to be construed. But the intention is to create a simple presumption against the owner who could rebut it. Generally he is the driver of the vehicle, but if he was not driving it at the time of the accident, he could always produce witnesses, or even one witness for his own evidence, and the case would be dismissed. For example, even if his car were stolen, he would naturally have reported it to the police, and presumably there would be no charge. Or if he had lent it to somebody, he could always give the name of the person who had the car at the time of the incident. The way it is supposed to be construed it would be an easy rebuttable presumption. Maybe the terms go a bit too far; maybe we could change that if the Committee is of the opinion that we are creating a too strict presumption against the owner. We do not wish to put him in an awkward position, or to cause undue hardship to the owner because that might be one weakness of this bill.

Mr. BELL (*Carleton*): I am sympathetic with the explanation, but very unsympathetic with the draft of the bill.

Mr. FOREST: I thought maybe the lawyers of this Committee could improve on the amendment, but the intention of the bill is to deal with those growing numbers of cases; my opinion is that the innocent motorist would be protected and the victim would be the guilty motorist who does not care to stop or to render assistance after causing an accident or hitting a person on the road. This is the purpose of the bill. At the moment it goes too far, but I think there is some inadequacy in the law which results from the fact that most people go scot free after having caused a hit and run accident. This would strengthen or remedy the inadequacy of the existing legislation.

Now, I am quite ready to accept another drafting, as Mr. Bell has suggested, to render this presumption more easily rebuttable.

Mr. LAFLAMME: Mr. Forest, is it not a fact that when there is an accident, when they do not know who was driving the car, policemen go after the owner first? In fact, it does not change it at all. But I really think that it is a matter for the Criminal Code, not civil rights and I really think it is quite hard to put on anyone the presumption of being responsible for an accident. I think this principle goes very far. It is quite hard enough to defend when there is a charge made against anyone; the police do their work, but I do not see what is the purpose of the bill, to aid the presumption of a criminal offence? What is the purpose?

Mr. FOREST: But the Crown, the police have to prove who had the care, charge, and control of a vehicle. If the driver has disappeared, they have no proof, usually, at all. This would force the owner to reveal who was driving at the time.

(*Translation*)

Mr. CHOQUETTE: They are presumed innocent, not presumed guilty.

(*English*)

Mr. OTTO: Mr. Chairman, I am rather amazed that Mr. Forest does not consider what we are doing here. First, to rebut even a presumption is a very expensive business. In other words, you are putting an individual who happens

to own a car to two tests; first, to provide an alibi and to prove his innocence and to pay a fantastic amount of money these days to prove himself innocent. The onus, now, you are putting on the people instead of on law or on the law enforcement agencies. Consider also that the police are like other individuals; if there is an easier road, they will take it, and if it is quite easy to find someone who owns a vehicle who does not have an alibi, to charge him and let him prove, let him find the guilty party. If you are talking about statistics, I am sure if you compare the statistics of the number of vehicles stolen to the number of accidents where they cannot find the guilty party, you will find that a fantastic number of vehicles are stolen and a good portion of those incidents will wind up with the owner having to prove himself innocent.

Mr. FOREST: In such a case like the owner usually reports his car stolen. Naturally, then, he would not be charged at all.

Mr. CHOQUETTE: It happens at times that some people, some kids take the car from the owner, then they take it back and the owner did not even know about it.

Mr. FOREST: I admit, Mr. Otto, it would impose some burden on the owner to prove his innocence rather than having the Crown prove him guilty, but it is due to the difficulty of these hit and run cases.

● (11.30 a.m.)

Mr. MACEWAN: Under this proposed amendment an immediate charge could be laid, an information laid against the owner of the car; I do not think that is fair at all.

Mr. FOREST: Naturally you have to rely on some good faith on the part of the Crown. If they know who it is they will charge the guilty person but—

Mr. MACEWAN: —sometimes the Crown is reasonable and sometimes it is not.

Mr. SCOTT (*Danforth*): I just have a few objections and maybe the witness will satisfy them. I think one of them has already been made, namely, that what you are suggesting, and I am sure you do not mean it, is you are seeking to reverse the whole basic philosophy of the Criminal Code which is that an accused is presumed innocent and that the onus to prove him guilty beyond a reasonable doubt is on the Crown and never shifts throughout the trial.

What you are doing by this bill is really reversing it and I think you do not want to do this; but it certainly is a very dangerous principle because, as Mr. Otto has pointed out, the difficulty of reversing an onus, once it is erected certainly by statute, would be very very hard.

The other thing is, have you given any consideration to the real ingredient of the offence? The real ingredient of the offence is not leaving the scene, or being in control, but leaving it with the intent to escape civil or criminal liability. This is the real ingredient of the offence under this new section of the Code and it is in the difficulty of proving this that a lot of the trouble arises in getting convictions. Have you given any consideration, whether some amendments might be necessary?

Thirdly, if you are going to even erect a slight presumption, it seems to me you have to write into it very very carefully all that is required to reverse the

presumption, because it should not have to be very much under the Code. I think it is a very dangerous principle you are suggesting, although I realize you are not putting it forward in that way but that certainly is how the bill reads.

Mr. AIKEN: I would like to make a couple of comments. We do not have it here, but is there not another presumption in this section in connection with the very matter that Mr. Scott raised, namely, the intent of escape civil or criminal liability. It seems to me that that presumption in a subsequent subclause is raised against the accused; that if he does leave, it is presumed he left with an attempt to escape civil or criminal liability, unless he proves otherwise. So perhaps he has got two or three people.

Mr. FOREST: This is paragraph three: If he has left it is *prima facie* evidence that he had intention to leave. It would be hard to prove in any case, if he left, because he wanted to prevent civil or criminal responsibility but that is usually the main reason why people do not stop after an accident.

Mr. SCOTT (*Danforth*): Having defended some of these people, I know just how difficult it is to reverse that presumption which is erected by statute. If you now go further and raise another presumption against the accused, I think it is hopeless.

Mr. OTTO: Well, Mr. Forest there is just one other thing I would like to add, I can see your sense of injustice here, but you will recall, or some of the lawyers will, that motor vehicle accidents, or negligence in regard thereto, are not classed by some very famous decisions as the equivalent of a criminal act, In other words, there is the principle involved that when a person takes to the highway, he must give up some of the right, some of the securities that he would normally have, and he takes on himself a certain amount of risk by just the very fact of using the highways and using motor cars. So I can see your anxiety to cure an injustice where some people have negligently caused the loss of life and yet get away with it. But this is part of the whole principle of law that no one as yet has thrown out. There is a difference between criminal acts, according to our criminal law, and quasi-criminal acts on a highway.

Mr. FOREST: I understand. It is difficult to find an effective way with which to strengthen the hold as it is. This is one way, I thought of. I do not know if there would be another way to render it more effective but as it is, it is a fact that most people who are guilty of these offences go scot free. They never can be identified and the proof for the Crown, is difficult to secure even if they have taken his registration they cannot prove it against the driver, it is very difficult. Pardon?

Mr. LAFLAMME: The owner of the car in those circumstances, is liable for civil damages. It is just as hard for him.

I just would like to give a simple example of what could happen. Suppose I have a son and I lend the car to him. He goes to a party with two other friends of his. They get the car, they have an accident. They escape. The owner of the car will have to explain what happened during the night. I do not think we would assent to the principle of creating a presumption of convicting people by presumption in criminal offences. I just would like to know where this bill would go if it were passed. Would it improve the law? Would it improve

something? Or will it put on anyone the burden of defending himself and having a lot of trouble at the courts any time those circumstances occur, and if the owner of the car cannot find who was driving the car, he will be responsible? He will be convicted?

Mr. FOREST: Not necessarily. He could always present witnesses that he was somewhere else or that he was not driving the car.

Mr. CHOQUETTE: It is a principle of the Criminal Code.

Mr. FOREST: Well, that is what I said. What is worrying me is the balance of inconvenience to the owner, considering the advantage to improving the law. That is the main point.

Mr. NIELSEN: Mr. Chairman, Mr. Forest seems to be alone in his arguments here. I want to advance some on his side and I do so not with the intention howsoever of endorsing the principle that he is trying to establish through his bill. I simply advance these observations, hoping to stimulate further discussions. Presumptions in criminal law are not new. They are rare. There is, for instance, the presumption that Mr. Forest has already pointed out contained in sub-section three of the section which he seeks to amend, Section 21. There is also an even more familiar presumption which is an extremely difficult one to rebut in defence of accused persons, and that is the one relative to recent possession of stolen goods; so it is not entirely against the principles of Canadian justice that presumptions should be acceptable in the design of our criminal law.

Mr. LAFLAMME: Not only to finally convict someone but it is the consequences of a conviction by presumption in those circumstances because the action involves some other responsibilities, civil and other things which do not occur in the other cases where you say there are presumptions. It is not a simple fact, an accident.

Mr. NIELSEN: Well, let us leave for a moment the possibility of a presumption arising as to the attempt to escape civil liability, and just dealing with the criminal content of what Mr. Forest is trying to accomplish here. You can conceive of certain situations where it would not be unusual that a person would be in possession, for instance recent possession, of stolen goods quite innocently and yet be brought to liability.

Mr. OTTO: The chances are that if one is in possession of stolen goods, he has had something to do with it; whereas in this case I believe the probability is much further removed. Mind you, I do not agree with the original part of the code in connection with stolen goods but it is, and I think you will agree, something that is not a pleasant thing to defend oneself against and to add a further presumption will be just another nail in that same coffin, as one might say.

Mr. NIELSEN: Well, I merely have advanced some arguments on Mr. Forest's side, again not for the purpose of endorsing the principles he is trying to get across, but there is nothing, in essence, wrong mechanically with his suggestion. Whether or not it is an acceptable principle is quite another thing but the presumption that he is trying to create is certainly nothing new to criminal law.

Mr. BELL (*Carleton*). Oh, there are scores of presumptions of this type in the Code. I have in front of me the index to the Code showing in at least 20 cases that there are presumption of the type which Mr. Forest explained, not the type that is in the draftsmanship of the bill.

The CHAIRMAN: Well, in answer to certain comments, Mr. Forest indicated his willingness to change paragraph (b) by substituting the word, I take it, "presumed" for "deemed" and I was wondering if we wanted to discuss the principle on the basis of the words should be "shall then be presumed to be the person having had charged" and that, to a degree, eliminates some of the curse that is on it that we have been talking about. But it does not get right down to the principle of whether or not we want to recommend this.

Mr. BELL (*Carleton*) May I ask, Mr. Chairman, Mr. Forest whether he has discussed this matter with the director of the criminal law division of the Department of Justice or with the Attorney General of his own or any other province?

Mr. FOREST: I wrote to the Minister of Justice.

Mr. SCOTT (*Danforth*): Mr. Chairman, we should hear some of these people as to their experience with this section of the Code and what difficulties they have encountered, and any ideas they may have as to the way in which it could be safely strengthened.

Mr. BELL (*Carleton*): I would be quite interested in knowing what the views of the Attorneys General of the provinces were in a matter of this sort. Has there been a real problem encountered by the police and what suggestions would they have, if such a problem has been encountered, of meeting it.

Mr. MACEWAN: Was it discussed at the last federal-provincial conference on crime?

Mr. NIELSEN: Another question, too, that I would want to ask, Mr. Chairman, is whether the bill had gone through the mechanics of being cleared under the requirements in that regard with respect to its constitutionality, and so on.

Mr. FOREST: No. It was just presented because of my own experience in some similar cases and I know for a fact that there have been a rash of hit-and-run cases in the last few years. I know that there are very seldom convictions in these cases. It was introduced for the purpose of strengthening the law, though I was myself worried about the implication on the inconvenience and the awkward position it might put some owners, naturally and especially if the Crown was not prudent in laying charges.

The CHAIRMAN: What is in your mind, Mr. Nielsen, in regard to constitutionality? Is it property and civil rights that you have in mind, or what?

Mr. NIELSEN: No, no, there is a requirement that all private members bills submitted have to be vetted by the Minister of Justice for their correctness—

The CHAIRMAN: All I can say is that I wrote to the Minister of Justice and told him that these bills would be considered by the committee, and asked him

if he wanted to be represented either in person or by a member from his department. I have a letter this morning saying that they do not intend to appear. Whatever inference you can draw from that, I do not know.

Mr. SCOTT (*Danforth*): I presume you had no right to ask them to do so. I was wondering whether the committee would welcome the suggestion that the clerk send a text of the bill to the various Attorneys General and tell them we are looking at it and ask for comment and reply, and we might get some response that would be useful to us.

The CHAIRMAN: Is that a motion?

Mr. SCOTT (*Danforth*): I will make it a motion.

Mr. MATHER: I will second it.

The CHAIRMAN: You have all heard the motion that the Clerk of the Committee be asked to write to the various provincial Attorneys General asking for their comments on the principle in Mr. Forest's bill.

Mr. AIKEN: Mr. Chairman, may I speak to the motion. I think probably we should concern ourselves with whether or not—the committee intends to submit the identical wording that is here. It seems pretty general but if the committee feels that the proviso was too strong, that is the presumption, we may get nothing more back than the suggestion that the word “deemed” is too strong. Is the motion that we submit the bill exactly as drafted together with a copy of the minutes of these proceedings.

Mr. FOREST: I have no objection if you believe that the English term “shall then be deemed” as going too far. As explained in the note, it is only to create a simple presumption, I have no objection to substituting “shall then be presumed to having been the person having the care, charge, control of such vehicle,” if you think that is better.

Mr. SCOTT (*Danforth*): Yes, I think it is a good one that the minutes this morning indicate our qualms about the bill as it stands, and it might be useful if they were annexed to the bill when you send it out.

Mr. NIELSEN: Would you also include the Attorneys General for the Yukon Territories?

Mr. SCOTT (*Danforth*): I would be delighted to. We would not want to overlook them.

(Translation)

Mr. CANTIN: I have two remarks to make here. I think that the very principle of the Bill, I object to because of extending the presumption which might exist because whether we like it or not I was born in an area where, in Quebec perhaps we have the best laws in the world, we have the civil code, the Napoleonic code, and with the English Criminal Code, which has established the principle that any person or persons are innocent until proven guilty. Now secondly, I doubt of the very usefulness of a change in the law from a practical point of view solely and that is that if an accident like this occurs either we catch up with the vehicle or we don't. If we don't then of course no case can be

made. If we do catch up with the vehicle it seems to me that it is always easy then to establish who might have been the driver of that vehicle and therefore not just establish the presumption against the person who is registered as the owner. He can easily defend himself by saying that he was not there.

Mr. FOREST: It is precisely because we could catch those who were not identified in most cases that is to say, the owner could easily defend himself if he is not the one. He could then find the person who was driving the vehicle.

Mr. CANTIN: The Code as drafted does not prevent laying a complaint or any information against the owner of the vehicle. If there is no evidence as to the identity of the owner and he cannot be forced to give evidence, it would not be worthwhile for the Crown to proceed.

Mr. CHOQUETTE: The onus is then on the person who is in no way involved, this is what is implied here and that is unfair.

Mr. FOREST: I understand that this can go as far as that and cause inconveniences.

Mr. CHOQUETTE: My car might be at my door, there might be a young man who temporarily steals the car, goes and kills someone and then brings the car back. With fingerprints we can see that it was this particular car that killed the person but the owner would then be accused of criminal negligence.

Mr. FOREST: Of course if you reported the theft of the vehicle to the police, there would be no complaint. We have to have some good faith in the Crown which would not lay charges indiscriminately. But of course, if there is no identification, then the complaint would be laid against the owner to discover who was driving the vehicle.

Mr. CHOQUETTE: Are we discussing a motion, or what?

(English)

The CHAIRMAN: As I understand it, the Attorney General of the Yukon and the Attorneys General of the provinces, if the motion is passed, are to be advised of this particular bill and the change suggested is that the word "deemed" be changed to "presumed" and we ask for their comments on the principle of the bill. Now, is that the intent of the motion, Mr. Scott?

Mr. SCOTT (*Danforth*): The intent of the motion is that a copy of the bill as it stands, plus the minutes, will go to these officials. I am not too happy about putting in words about presumptions. I think the discussion makes clear our objections.

The CHAIRMAN: Any further comments?

Mr. CHRÉTIEN: Yes, Mr. Chairman, I oppose the motion because I am opposed to the principle involved here in the bill.

The CHAIRMAN: Maybe we are wasting time in writing to the Attorneys General, but on the other hand we may not. We may get back some very valuable information.

Mr. BELL (*Carleton*): We are not committing ourselves in any way by doing so, and when we send out the text of the minutes of the proceedings of today, the Attorneys General will see the reservations and the qualms which members of the committee have, and they will undoubtedly take that into consideration and, I think, will as well be prepared perhaps to suggest some alternatives. I think we want to know from them how serious is the problem in their provinces. If it is serious, then we should see whether there is some other technique of dealing with it, perhaps something quite different from what Mr. Forest has proposed.

Mr. NIELSEN: At most, it is a fine example of cooperative federalism.

Mr. FOREST: Well that is right. If there is an alternative, I would like to know it.

The CHAIRMAN: Mr. McQuaid, would you go over next door and see if you can get one more body in here because we are minus one for a quorum.

Mr. FOREST: That is what I would like to know, if there is an alternative. I have not thought of one but maybe somebody would have one.

Mr. LAFLAMME: I just would like to put in the record some presumptions which still exist in the Criminal Code actually and which are quite different from this one, in this new bill. Sub-section two of section 224 of the Criminal Code reads:

For the purpose of section 222 and 223, where a person occupies the seat ordinarily occupied by the driver of a motor vehicle he shall be deemed to have the care or control of the vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion.

This is a presumption quite different from this one.

Mr. FOREST: That is the impaired driving section—224.

Mr. AIKEN: There is a technical problem. You have officially noted that we lack a quorum. I do not see how we can go ahead until we have one. Unfortunately it has been officially noted.

Mr. CHAIRMAN: No part of what we are doing now will be recorded in the minutes until we have a quorum back. It has only been in the last couple of minutes that we lack a quorum.

Mr. CHOQUETTE: How do you get a bill studied by the committee? How can we study that bill?

Mr. FOREST: You will remember the bill was referred by the house to this committee.

Mr. MACEWAN: Mr. Chairman, since the minutes of these proceedings are going to be sent to the Attorneys General, I wonder if we should not have some discussion on the words in the second line of subsection (b): "Provided that in any case where it has not already been established"—I am just wondering if these words should not be changed to "these cases where it cannot be established" rather than "where it has not been established". As they are set out

there, there might be a tendency for the Crown not to try to establish who was actually driving the car when all he has to do is charge the owner. I think if we change these words to "where it cannot be established" that would at least put a burden on the Crown to attempt to establish—

Mr. NIELSEN: I do not think they should be there at all.

Mr. CHAIRMAN: I think that Mr. Forest would agree with that change. I know that I would, simply as a member of the committee.

Mr. FOREST: There might then be a discussion then as to whether the Crown could or could not establish at the time what had happened.

Mr. AIKEN: The only thing I can feel for the argument is that the Crown may not make any reasonable effort to try to establish who the driver is when they can just say "well, we charge the owner".

Mr. SCOTT (*Danforth*): Lay an immediate charge against the owner.

Mr. AIKEN: That is right.

Mr. SCOTT (*Danforth*): That is what I would be afraid of.

● (12 noon)

Mr. AIKEN: Mr. Chairman, I am not too clear on how our proceedings are being recorded. When we talk about the minutes will this mean a summary of the remarks made or is it a transcript?

The CHAIRMAN: The minutes are being recorded, yes.

Mr. AIKEN: Good.

The CHAIRMAN: We have a motion moved by Mr. Scott and seconded by Mr. MacEwan that a copy of Bill C-118 together with a copy of the minutes of today's proceedings be forwarded to the Attorneys-General of the provinces and the Attorneys-General of the Yukon and the Northwest Territories, with a request that they let us have their views on the same. Those in favour of the motion please signify.

Mr. CHOQUETTE: Is this subject to debate?

The CHAIRMAN: Pardon. Well we have debated it. Mr. Mather and Mr. Stanbury do you have any further comments?

Mr. STANBURY: Mr. Chairman, I would like to add briefly that not having had the benefit of the discussion—I do not want to prolong it—I should like to know the reason behind it.

The CHAIRMAN: The reason behind it, I think, turned around the word "deemed" in clause B, whether that should not have been a lesser word such as "presumed", and also the question as to what onus we are putting on the owner of an automobile, by saying that he was presumed to have been the person who had the care, or charge, or control of the vehicle at the time of the incident. It was felt that it would be valuable to obtain the opinion of various Attorneys-General as to their thinking along those lines, and for that purpose a copy of the minutes be sent to them and also a copy of the bill.

Mr. NIELSEN: I think it is fair to say Mr. Chairman, that the committee has not committed itself to the principle or to the wording. All we are seeking is advice from the Attorneys-General to the extent of the problem and whether they have any advice to offer this committee.

Mr. CANTIN: It is our responsibility.

The CHAIRMAN: Are we ready for the motion now. All those in favour of the motion, please signify.

Motion agreed to.

The CHAIRMAN: Thank you very much. We will have to wait until we hear from the Attorneys-General now. Do you want to adjourn? Mr. Southam is here prepared to go on.

The Chair will entertain a motion that we adjourn. Moved by Mr. Nielsen and seconded by Mr. Bell.

Motion agreed.

Thank you very much gentlemen.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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and/or a translation into English of the French.

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, APRIL 26, 1966

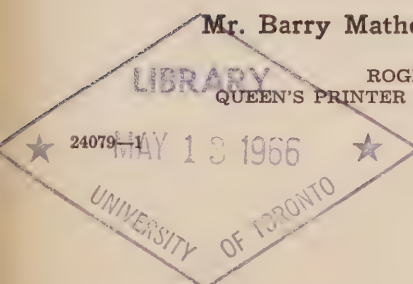
Respecting the subject-matter of

- Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).
Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).
Bill C-87, An Act to amend the Criminal Code (Impaired Driving).
Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and
Private Members' Notices of Motions Numbers 26 and 31.

WITNESS:

Mr. Barry Mather, M.P., Sponsor of Bill C-87.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966



STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Goyer,	Mr. Otto,
Mr. Asselin	Mr. Honey,	Mr. Ryan,
(<i>Charlevoix</i>),	Mr. Laflamme,	Mr. Scott (<i>Danforth</i>),
Mr. Bell (<i>Carleton</i>),	Mr. Langlois (<i>Mégantic</i>),	Mr. Stanbury,
Mr. Cantin,	Mr. MacEwan,	Mr. Trudeau,
Mr. Choquette,	Mr. Mather,	Mr. Wahn,
Mr. Chrétien,	Mr. McQuaid,	Mr. Woolliams—(24).
Mr. Fulton,	Mr. Nielsen,	

(Quorum 13)

Gabrielle Savard,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, April 26, 1966.

(3)

The Standing Committee on Justice and Legal Affairs met at 11:30 a.m. this day. The Chairman, Mr. A. J. P. Cameron, presided.

Members present: Messrs. Bell (*Carleton*), Cameron (*High Park*), Cantin, Goyer, Laflamme, MacEwan, Mather, Nielsen, Ryan, Scott (*Danforth*), Stanbury, Trudeau, Woolliams (13).

In attendance: Mr. Barry Mather, M.P., sponsor of Bill C-87, An Act to amend the Criminal Code (Impaired Driving); also Mr. Gérald Beaudoin, Assistant Law Clerk.

The Chairman announced that Mr. Mather would replace Mr. Brewin on the Subcommittee on Agenda and Procedure.

On Motion of Mr. Bell, seconded by Mr. Laflamme,

Resolved,—That the Committee recommend to the House that its quorum be reduced from 13 to 10 members.

The Chairman invited Mr. Mather to explain Bill C-87.

Following his statement, Mr. Mather was questioned and a discussion took place. Mr. Scott registered his objection to the breathalyzer test.

Mr. Nielsen moved, seconded by Mr. Scott (*Danforth*),

That the Steering Subcommittee, based upon the views expressed by members today, call such expert testimony to be given to the Committee—at a time at which the Steering Subcommittee may advise—including expert testimony on the mechanical means by which the various tests are applied.

Carried on division.

At 12:30 p.m. the Committee adjourned to the call of the Chair.

Gabrielle Savard,
Clerk of the Committee.

EVIDENCE

Recorded by Electronic Apparatus

TUESDAY, April 26, 1966.

● (11:25 a.m.)

The CHAIRMAN: Gentlemen, we have a quorum and I will call the meeting to order. I have one announcement to make. Mr. Brewin has been replaced on the Committee by Mr. Mather. Mr. Brewin was on the steering committee and, in consultation with the Whip of Mr. Mather's party, the New Democratic Party, he suggested that Mr. Mather replace Mr. Brewin on the steering committee. Is that agreeable?

Agreed.

Mr. BELL (*Carleton*): Before you go on with the agenda, Mr. Chairman, I wonder if we might consider the problem of a quorum? Perhaps it is because of my Irish background that I am superstitious about sitting around a table as one of 13 and, consequently, I would like to move that we request the House to reduce the quorum of the committee to 10.

Mr. SCOTT (*Danforth*): I second the motion.

The CHAIRMAN: Well you have heard the motion. May I say I was at the Public Accounts committee this morning and they had the same problem; they are presenting a report this afternoon to the House asking that their quorum be reduced to 10. I had in the back of my mind—and I do not know whether it is good strategy or bad—that we wait and see what happens to their report before we deal with ours, but if you would rather go ahead with it, it is quite all right with me.

Mr. SCOTT (*Danforth*): If the quorum for the House is 20 out of 265 I do not think it is unreasonable to ask for 10 out of 24.

The CHAIRMAN: Well, the matter is under discussion. Before I put this matter forward I would like to know all those who are in favour of submitting a report asking that we ask the House to give us leave to reduce the quorum to 10.

Motion agreed to unanimously.

Mr. SCOTT (*Danforth*): Mr. Chairman, may I raise a second point of order before we get on to the Bill this morning? Is the Chair in a position to advise members of the committee when it is anticipated we will get to the bills and the subject of automobile safety?

The CHAIRMAN: I was going to ask if the steering committee would meet after this meeting and discuss that.

Mr. SCOTT (*Danforth*): Because the Chair will understand there is a lot of preparation involved and I would like to have some idea when we will reach the subject.

The CHAIRMAN: Then I will present the report and I will ask for unanimous consent to have it dealt with by the House. If we do not get it, then, of course, it will go on the Order Paper for debate after 48 hours.

Mr. Mather, you have the floor, to explain your bill.

Mr. MATHER: I have prepared a statement in support of my bill but, first of all, I think the fact that a number of members of the House have agreed to have their bills and resolutions, all dealing with one aspect or another of traffic safety, come before this committee at once, is indicative of the concern over the growing toll of traffic accidents and the members are so well acquainted with that toll that I need only take a moment to put it on paper.

The latest figures show that a traffic death occurs in Canada every 100 minutes, one traffic injury is recorded in Canada every three and a half minutes. For every person killed in this way—and there were close to 5,000 killed last year in Canada—there are 30 persons injured and the total charge against our economy, as the result of all these casualties and property damages from traffic accidents, is estimated to be about \$600,000,000 a year. So this, in round figures, is the problem that we, in one bill or resolution or another concerning traffic safety, are seeking to grapple with.

As we know, there are various aspects to traffic safety; safety features in cars is one; better signing, uniform signing of traffic laws is another; driver training, and so on, and the Bill No. C-87 which I am presenting this morning or the subject matter of it, rather, deals particularly with the traffic problem caused by the drinking driver.

Estimates of the toll taken by that particular contributor to traffic carnage vary greatly but I think it would be safe to say that the drinking driver is held to be responsible or involved in some one third to one half of all the fatal traffic accidents in North America.

The purpose of the bill is to amend the Criminal Code in relation to the offence of driving while intoxicated and the offence known as impaired driving and also to recognize the breathalyzer test, carried out by properly trained technicians, as an accurate method of determining blood alcohol levels.

I will quote very briefly from the explanatory notes of the bill on this point:

In the present legislation two offences are provided for intoxication and impaired driving. Both are degrees of the same thing. Those expressions are not defined and most of the time the prosecutions are made under the charge of impaired driving.

It is suggested to retain only the offence of impaired driving.

Concurrent with that, we would also provide in this bill for a compulsory test, the breathalyzer test, and the refusal to provide such a sample when required by a law enforcement officer would constitute an offence. It is suggested that the penalty for this additional offence should be the same as for impaired driving, as any lesser penalty would be in the circumstances an inducement to refuse.

To protect the individual the law enforcement officer who requires that a sample of breath be provided must have reasonable and probable

grounds for believing that the accused has committed an offence and the refusal to provide the sample must be without cause.

It is suggested that the refusal to take a test or give a sample is not admissible in impaired driving proceedings and evidence of such refusal should be admissible only in support of a charge of refusing to give the sample.

Mr. Chairman, before you come to consideration of detailed proposals in the bill, I thought it might be useful for you to consider how many other countries and states now have similar legislation in effect. These countries, which I will now name, have mandatory tests of a similar nature to the one which this bill proposes: Belgium, Finland, Western Germany, Iceland, Luxembourg, New Zealand, Norway, Peru, South Africa, Sweden and Switzerland. In the United States this or similar legislation is mandatory in five of their states and implied consent is present in, I think, 12 or 14 other of their states. This implied consent law in the United States is a law which provides that if you drive an automobile on a public street you have implied that you have given your consent to a chemical test for alcohol if placed under arrest for a driving while intoxicated offence and refusal to take that test in those states results in a loss of the driving privilege for a specified period.

We know also that the province of Saskatchewan has legislation providing for suspension of the licence of a driver suspected of driving while under the influence of alcohol if that driver refuses to give a sample of his breath and this legislation has been ruled valid by the Supreme Court of Canada. I thought that that information might be useful in giving us perspective of the growth of acceptance of this kind of legislation which the bill proposes.

Now, Mr. Chairman, I think there are two major criticisms against mandatory breathalyzer tests. I would like to say something on each of those points. It is, for example, argued that there is an interference with the civil right in the making of a compulsory breathalyzer test. Might I quote from one or two authorities against that contention? This is what the Canada Highway Safety Council says on that point, and I quote:

Driving an automobile is a privilege accorded by provincial governments and it is not a right. Like any other privilege this one carries certain obligations such as obeying the laws of the province and the country; producing registration and operator's permit when required by the police to do so; submitting to a check of brakes or lights as required. It is the consensus in police circles that submitting to a breathalyzer test should be one of the obligations.

Further to that point, Mr. Chairman, quoting briefly on the statements by Mr. Justice E. L. Haines, he says:

Today a motorist must identify himself by producing his operators licence, produce evidence of ownership of the vehicle so that all may know it is not stolen, prove his financial responsibility, permit a mechanical inspection of the vehicle as to its fitness, report any accident involving personal injury or property damage over \$100, remain at the scene of an accident and offer assistance to the injured. These are all exceptions to the so called right to remain silent, and they were created

in the interest of public safety. Identity of the driver and owner, proof of financial responsibility, safety of the vehicle, these are secondary compared to the physical fitness of the driver. Why should not we take the step to ensure true disclosure of that fitness when it has been affected by alcohol? Our duty to ourselves, the potential victims of that driver, demands nothing less.

If one more brief quotation would be permitted under this heading, Mr. Chairman, I have one from a distinguished source. I quote the Leader of the official Opposition in this Parliament, Mr. Diefenbaker. At page 4401 of *Hansard* which, for the information of those who do not have that particular volume handy, is the *Hansard* of June 29th, 1950, Mr. Diefenbaker said:

I am not going into the chemical arguments now although I am in a position to do so. There are those who will say that it means some invasion of one's liberty. Looking at it from the point of view of one who, with few exceptions, has invariably been engaged on the defence side, my answer is that I do not believe any question of the liberties of the subject arises when a person who has been in an accident which was obviously due to his negligence, and who apparently is under the influence of liquor, is asked to breathe into a balloon with a view to determining once and for all the question whether or not the degree of his intoxication was such as made it dangerous for him to be on the highway.

From Mr. Diefenbaker. Mr. Chairman, to come to the other area of opposition to this type of proposed legislation is the argument advanced by some that impairment varies among humans to such a degree that one person, for example, who might have had four drinks may be less impaired than another person who might have had, say, two drinks. In answer to this argument I would quote again from the Canada Highway Safety Council and it says—and this is an organization, as we all know, which has given a great deal of impartial thought to such problems as this:

Since the accident hazard begins to rise with blood alcohol concentrations in the neighborhood of .05 per cent it is clear that the ability to drive safely is impaired before driving becomes noticeably erratic to police officers and long before universal agreement could be expected on a driver being intoxicated. Measures to reduce the number of motor vehicle accidents caused in whole or in part by alcohol must be related to the demonstrable hazard associated with alcohol rather than to a driver's state of impairment or intoxication as judged clinically. The assumption that a driver who is demonstrably impaired or intoxicated is unsafe to drive is valid. The converse assumption that a driver who is not so demonstrably impaired or intoxicated is safe to drive is not valid. The Canadian Medical Association, the American Medical Association, the British Medical Association and many other organizations competent to express an opinion have stated that the highest level of blood alcohol that can be regarded as entirely consistent with safe driving is .05 per cent. There is variation in the effect of alcohol from person to person and from time to time in the same person, but administrative measures to prevent persons driving when their ability to do so has been compromised by alcohol cannot be framed on an individual basis, for the same reason that

speed limits cannot be individually determined according to a driver's competence. Rules must be made which will apply to all members of the driving population equally, regardless of individual variation and tolerance to alcohol and based on the results of experience and experiment on average members of society.

Mr. Chairman, this pretty well concludes my presentation in support of my bill. I should say that it has the support of the Canada Highway Safety Council and has the support of the Committee of the Canadian Medical Association which is concerned with the relationship between drinking and driving.

Before I conclude, I would point out though, Mr. Chairman, that while I have been speaking, statistics on the average would indicate that 20 people have been injured, one person has been killed and something like \$75,000 of property damage has taken place during the presentation of this support for the bill. And a proportion of all that toll, of course, has to do with impairment.

Personally, I believe that it is time that our country moved with many other countries to protect the public's rights rather than to preserve the drinking driver's privileges.

The CHAIRMAN: Thank you very much, Mr. Mather, for your very interesting, very informative statement. The committee is now open to ask questions and express its opinion on the subject matter of your bill.

Mr. SCOTT (*Danforth*): First of all, I want to congratulate Mr. Mather on bringing forward this important matter. I wondered how and on what basis you arrived at the .08 per cent.

Mr. MATHER: I believe that the figure of .05 per cent is the generally accepted one as being the level where impairment begins. The .08 per cent would be that supported by some authorities, including, I believe, the Canadian Medical Association.

Mr. SCOTT (*Danforth*): There is a danger, then, that if we accepted this figure we would almost be legalizing impaired driving. My information is that every available study indicates that impairment begins at .04 per cent and, at .05 per cent, the degree of impairment is rising very rapidly. I just wondered why you wanted to extend it to an upper limit.

Mr. NIELSEN: Whose figure is the .08 per cent?

Mr. MATHER: I believe it is the Canadian Medical Association's figure.

Mr. WOOLLIAMS: If I might ask a supplementary question, Mr. Chairman, what does that spell in ounces of alcohol? I know it is going to vary but have you any idea?

Mr. NIELSEN: About two ounces, I would think.

Mr. SCOTT (*Danforth*): No, no, .05 per cent is three drinks of an ounce and a half each.

Mr. MATHER: That was my understanding.

Mr. NIELSEN: You say you think that the .08 per cent is that given by C.M.A. Do you know that it is?

Mr. MATHER: No, I cannot say definitely that I know but I know that my bill has the support of that group, the committee on this type of legislation, and they know that the bill calls for .08 per cent. If the members of the committee think that that is too high a figure, I would be happy in having the bill amended.

Mr. BELL (*Carleton*): Well, am I correct in understanding you, Mr. Mather, that you are saying that .08 is conclusive evidence but that other evidence could be given that there was impairment at a considerably lower content than .08 and a person would be convicted on that evidence.

Mr. MATHER: I agree.

Mr. SCOTT (*Danforth*): Mr. Chairman, I wanted, at some stage in our hearings to make a submission to the committee in opposition to the whole principle of breathalyzer and suggest an alternative. What would be the appropriate way to handle this?

The CHAIRMAN: I think you had better tell us what you have in mind.

Mr. SCOTT (*Danforth*): My main objection to the bill is the actual use of the breathalyzer itself. I think everybody in the committee is intensely worried about the whole problem of drinking driving and wants to get the best possible method of dealing with the problem. But my main objection is based on the growing belief, in the increasingly large body of evidence, that disputes both the accuracy and the reliability of the breathalyzer test itself and perhaps I could put some material on the record.

Numerous agencies in various countries have conducted tests into this aspect. Very extensive studies in the field have been carried out by one of the best known figures in the field of body metabolism, namely, Dr. I. M. Rabinowitch, who is a retired associate Professor of Medicine at McGill University.

Professor Rabinowitch argues that the breathalyzer accurately records the amount of alcohol in the breath but states that the breath is a very poor gauge of how much alcohol a person has actually consumed. He states examples in his studies where the amount of alcohol in the breath was as much as 250 per cent more than that in the blood. In some of his studies as high as 10 per cent of the cases have variations and he asserts that after a meal, for example, a man may have from 50 per cent to 300 per cent more alcohol in his breath than in his blood. As everyone on the committee is aware, the reliance of the breathalyzer is based upon the supposition that the amount of alcohol on the breath will be the same amount as that in a person's blood. If this is shown not to be so, the whole validity of the breathalyzer test can be called into question.

I might say I talked to Dr. Rabinowitch over the weekend at his home in Hamilton, Ontario, and I know that he is extremely interested in the bill and would be interested in testifying before the committee.

When we realise—most of us who defend impaired driving charges—that most courts will almost inevitably convict an accused when a breathalyzer reading of 1.5 is entered as evidence then, if Dr. Rabinowitch is correct, the dangers of this test are glaringly apparent. This would be all the more so if we legislated into law that a certain breathalyzer reading is, in fact, conclusive evidence of impaired driving. Dr. Rabinowitch in his evidence, Mr. Chairman,

asks us what would happen if 10 per cent of our fingerprint tests were inaccurate in our Criminal Code and yet, in the case of breathalizers, the courts are increasingly accepting this test as conclusive, and when tests which have been extensively canvassed all over the world indicate that it is inaccurate in up to 10 per cent of the cases. What we would be doing, it seems to me, would be erecting a very formidable legal structure on a very shaky medical foundation.

And it is perhaps not without significance that the Canadian Bar Association, at its convention last September, withdrew its support from the principle of compulsory breathalyzer tests and has ordered a year long study into the whole problem. I assure you this is not out of our desire to make it easier to get our clients off when they are charged with impaired driving, but is resulting from the growing feeling that the breathalyzer test itself is unreliable and unrealistic in the present circumstances.

What is happening, Mr. Chairman, and something the committee might be interested in taking into account, is the growing feeling among people that, rather than rely on this type of test, which is open to serious question, we legislate a new offence in effect under the act, of driving while not sober, and ruling that anybody who drives a motor vehicle where his alcoholic content is .05 is deemed to be not sober and the offence is then punishable. This would, it seems to me, remove a lot of the problems. First of all, it would remove all the stigma that goes with impaired driving and drunk driving. It would make it much more enforceable. For example, in Ontario 25 per cent of all the drunk driving charges are dismissed because they cannot really prove them and in Toronto up to 30 per cent. And there have been suggestions that we should think in terms of an absolute offence where a person, whose blood content or blood analysis shows him to have .05 per cent alcohol, is deemed to be not sober.

Mr. RYAN: How would you establish this?

Mr. SCOTT (*Danforth*): Well, in Norway, to which Mr. Mather referred today, they passed a law of this kind in 1926. The Norwegian Motor Vehicle Act defines anyone with .05 per cent alcohol in his bloodstream as "not sober" and then goes on to provide as follows:

Any person who operates a motor vehicle or is close to a motor vehicle he has just been using or is intending to start can be taken by the police for examination to a physician who will make a blood test, when it can reasonably be assumed that the operator is under the influence of liquor.

I might say that when I first looked at the bill I took the view that the mandatory nature of the test was an invasion of a person's rights and was almost a form of self-incrimination. But the more I looked into the problem and the more you realise the extreme seriousness of it, you realise that what you have to balance out is the right of a person to refuse a test as balanced against the right of the public to be protected against somebody who operates a motor vehicle when he is clearly not in a position so to do and I think that the public interest wins out. So that, under the Norwegian Act, a blood test is taken. The accused person can be taken before a physician who conducts a blood test which is accurate, and, on the basis of that, a charge can be laid. It seems to me that

under this arrangement you could have a graduated system of penalties. It could start with a fine and be progressively increased to suspension of licence for repeated offences, jail terms and, eventually, permanent suspension of the licence.

I just feel that the breathalyzer is an inaccurate method of handling the problem. All of the medical associations that have done tests, for example, state that .05 per cent constitutes three drinks of one and a half ounces each, taken within an hour of driving. Tests by Dr. Ward Smith, the Director of the Ontario Crime Laboratory, showed that at this figure responsibility for accidents rises sharply. A Swedish study shows the danger signs begin at .04 per cent. The American Medical Association says .05 per cent and Dr. Rabinowich who is one of the leading experts, claims .04 per cent is the correct figure. But somewhere in that general area is the danger point from the point of view of operating a motor vehicle and, rather than rely on tests, it seems to me we might consider something along this line.

MR. TRUDEAU: Could I ask, Mr. Scott, when you quote Dr. Rabinowich as saying there is a margin of error of 10 per cent does this mean that in 10 per cent of the times we have inaccurate results or does it mean that there is a 10 per cent difference between the point where the breath can incriminate one and the blood would not incriminate one?

MR. SCOTT (*Danforth*): Yes, in the article that I drew the material from, he was restricting his investigation to the relationship between the showing by a breathalyzer of the amount of alcohol on your breath as related to the true amount of alcohol in the blood stream, which is the only real test of impairment. And he found, in that case, there were variations of up to 10 per cent, which is a tremendous margin when you are dealing with the Criminal Code.

MR. TRUDEAU: A 10 per cent difference between the breath and the blood or a 10 per cent difference between the number of cases where you have accurate readings and non-accurate readings?

MR. SCOTT (*Danforth*): Ten per cent of the number of cases, I think. He said, for example, that if a man, say, has a meal at which he has a couple of drinks before, wine with it and a brandy afterwards, that he can have up to 300 per cent more alcohol on his breath than would show in his blood.

MR. RYAN: Mr. Scott, I take it that the variation is mainly with individuals.

MR. SCOTT (*Danforth*): Well, that is a second area; that is a second objection to the breathalyzer which I have not gone into, where, depending upon the time the alcohol is consumed, the person's physical make-up, his addiction to alcohol, his experience with drinking, all these can show quite a variation. But that deals, Mr. Ryan, with the effect of the limit itself. For example, at .05 per cent an inexperienced drinker could be completely intoxicated whereas a person who has been drinking over a long period of time and has built up a tolerance has a greater degree of control over the motor vehicle he is operating.

MR. RYAN: But the contents in the stomach make that a variation between the blood level and the breathalyzer level.

Mr. SCOTT (*Danforth*): I am told not really. It delays the transmission of the alcohol into the blood, but that is about its only effect.

Mr. MATHER: Mr. Chairman, if I could say a word on this, first of all I want to say I am very glad that my colleague has come around to the point of view that mandatory tests of one type or another are acceptable.

Mr. SCOTT (*Danforth*): You are very persuasive, in fact.

Mr. MATHER: Secondly, in connection with what he says about the questions raised by Dr. Rabinowich, it should be pointed out, I think, to the Committee that Dr. Rabinowich and the Canadian Medical Association differ very sharply in their findings or beliefs as to the efficiency of the breathalyzer test and also that his views are not those of an organization such as the British Medical Association.

However, as Mr. Scott has suggested, it might be interesting if the committee were willing to hear from the doctor and, if that were done, I would ask the committee if I might bring witnesses from the Canadian Medical Association. I think that most people would rather from the point of view of—I do not know how to say it exactly—violence done to the body or interference of civil liberties, accept the breathalyzer test than a blood sample test.

Mr. SCOTT (*Danforth*): Why? Why? What is the difference in terms of the invasion of privacy?

Mr. MATHER: Well, this is not my argument but this has been argued by people who oppose this type of test from the point of view of civil liberties. They think to take the blood test is an invasion of the body. This is not my view at all but I put it forward from the idea that I have that it would be easier for the public to accept the breathalyzer test.

Mr. TRUDEAU: I think you will find it is on a religious basis that some people have the conviction that you cannot draw blood but that you can draw breath.

Mr. MATHER: That is right.

Mr. RYAN: And, Mr. Chairman, in law, actually puncturing a vein to draw blood would be battery, I believe; whereas that taking of breath would not be battery but may be an assault, in the sense if it were forced, but I do not think it would be battery.

Mr. MATHER: My point of view was, as I think you can sense, that I would like to get some legislation through this parliament, eventually, which would provide for a mandatory test of drinking drivers. I put forward the breathalyzer test because I think that it has been found acceptable in many countries, many states. However, the principle of the bill is what we are discussing and, from my point of view, the principle is getting some action on a mandatory basis. If the committee were interested enough to hear the doctor or doctors I might call or suggest any other step that we might take, I would be very happy to co-operate with this basis.

Mr. TRUDEAU: I would think, Mr. Chairman, the interesting part in Mr. Mather's approach is that by using the .08 per cent figure he has provided for a margin or error. It might very well be possible to use this .08 per cent figure

and to say that if any accused wants to claim—I suppose this would require some slight amendment—that the .08 per cent in his breath did not correspond to, shall we say .04 per cent in his blood, then he would have the onus of having a blood test taken at his choice, if he so wished. But I think your approach, to me, appears to be the best one because it is the beginning of a stand by the legislature that anyone who takes a considerable amount of alcohol is in suspicion of the law and if he wants to prove in some way that he is not impaired, let him prove it. In Norway I think the legislation is that if you have taken any alcohol at all you are presumed to be guilty of impaired driving and people will not take so much as one drink if they are driving a car. They will have somebody else do their drinking or their driving.

The CHAIRMAN: Mr. Woolliams wanted to interject here too.

Mr. WOOLLIAMS: I have always taken the position to oppose these kind of tests but I may have an open mind—I hope I have—and I would like to hear evidence on it. I think that if we could hear the doctor or other witnesses it would be very good for the committee and would give us a greater appreciation of the problem which we are studying in reference to the bill. That would be a suggestion I make at this time.

Mr. RYAN: Mr. Chairman, as you very well know, there is a rule of law which states that the best evidence is what should be obtained, not the second best evidence, and therefore it would be better to have the evidence obtained directly from the venous blood stream rather than have this indirect evidence of the breathalyzer. But, against that, as Mr. Scott has pointed out, you have the necessity to commit assault and battery upon the person in order to get at the venous blood directly.

Now, I think that is part of the problem. Whether it is in the public interest that we can determine that there should be such a direct taking for the best possible evidence is what we will have to decide when we make our recommendations.

In respect to Dr. Rabinowich, it is some years now since I have been defending cases of this kind but I remember, going back a few years, that a man was considered impaired if he had 1.5 parts per thousand in his bloodstream. At that time I believe .02 per cent was regarded as the equivalent of roughly one ounce of alcohol and that if a man—the ordinary average individual—had about half a mickey in his system, or the equivalent of it in alcohol, he was deemed to be impaired.

Now, that is a considerably higher point than the .08 per cent that we are considering today. I believe that there has been an improvement in scientific techniques and understandings of this problem, in fact there is now recommended a drastic reduction in the level that scientists consider make the average individual impaired.

But I would be very anxious—and personally, I think it would be in the interests of the committee—to hear Dr. Rabinowich's evidence. Today, he may have amended his views considerably over the years or he may not have. I think his evidence would be relevant to what Mr. Scott has had to say earlier I would also like to see that the committee have before it the witnesses that Mr.

Mather suggested and I think we can get more precise details and know better where we are going after we have had the assistance of such witnesses.

Mr. BELL (*Carleton*): I would like to say that I would not be ready, personally, to make up my mind on this without hearing professional evidence. I think that evidence should be medical evidence and I think there should also be legal evidence. I would like to suggest that the steering committee take into consideration which of these are the best qualified persons and arrange to have them attend before the committee.

I do know that a committee of the Canadian Bar Association headed by its past President, Hazen Hansard, has given this very detailed study and I believe has made a presentation to the government on the subject. I think the steering committee should communicate with the Secretary of the Canadian Bar Association, Mr. Merriam, find out exactly what the status is and who might attend from that association to represent such consensus of views, if any, as the committee has been able to achieve.

Mr. SCOTT (*Danforth*): The other suggestion I wanted the committee to consider—and I make it hesitantly—is this; I have always wondered if it would not be beneficial to see a controlled test in this area and I wonder if the steering committee would consider consulting, for example, with the police for the obtaining of a representative group of citizens so that a scientifically controlled test could be conducted on the various levels at which a person's ability is impaired.

Mr. NIELSEN: I would like to volunteer for that, Mr. Scott.

Mr. SCOTT (*Danforth*): I was going to suggest that the committee be the subject but I thought it would get unfavourable publicity. But I think, if we are really going to get into the area of trying to fix a limit for impairment, it would seem valuable to seriously consider a scientifically conducted test on a group of people by giving them drinks at intervals in the presence of experts and then testing their ability to drive, so that we could try to establish some proper limit for operating a motor vehicle. I am not suggesting the Committee be the subject, but I think a group of volunteer citizens could be selected.

Mr. WOOLLIAMS: I think, Mr. Chairman, you had better clear with the Temperance League.

Mr. MATHER: I think it would be very appropriate for the steering committee, in view of the fact that we are dealing with this type of legislation, to take such a test.

Mr. RYAN: It would not steer straight afterwards.

(*Translation*)

Mr. LAFLAMME: Mr. Chairman, I have considered this and personally I do not think that at the present time any Committee member is in a position to make a decision on the necessity of establishing a compulsory test, either a breathalyzer or a blood test. I think that we should hear the views of experts in order to determine which one of the tests, either the blood or the breathalyzer test should be applied and which can provide conclusive evidence. So I would

respectfully suggest that as far as I am concerned—I have had some experience in the courts—any medical proof in this field would be assessed on an individual's capacity. For instance, if it were .04, somebody may be quite intoxicated, but somebody else may not be intoxicated with the same amount, it depends on individual's driving capacity at a given time, and therefore I would suggest that this is relative to the individual. And if ever in this world we were to introduce a maximum figure which would be recognized as conclusive evidence, then it should be a maximum of the overall individuals, and not on the average individuals. On this point, after having heard the evidence I personally think if we can reach any specific conclusions on such and such an alcohol level in the blood, evidence which would be valid for any individual, if we find that this is truly conclusive evidence, then I would agree that we establish a given standard. Now as regards to the principle of a compulsory examination, if the present one doesn't agree, we would have to choose one which would give the most conclusive results.

Mr. GOYER: Mr. Chairman, it is quite certain that evidence will be brought before our courts in order to determine if their driving is rather curious at times. Policemen can say that this is evidence. Somebody is staggering, he can't speak, his eyes are glazed etc. Scientifically this may also be just a matter of physical fitness and might lead us to false conclusions. Now on the contrary we say that in 30 per cent of the cases in Toronto it was not possible to determine that the person was actually guilty of impaired driving. In many cases, it was proved that these people were not truly impaired, perhaps because sufficient evidence wasn't available on those 30 per cent—I don't know. In many cases, we cannot prove it. And then we say that the margin of error is 10 per cent, well, there, I am a little afraid. That margin of error might lead us perhaps to convicting someone who is not really guilty, so whether it is a breathalyzer test or a blood test is not really material. The evidence that comes before our courts very often is quite hazardous and not safe at all. There may be many innocent people who have been convicted and vice versa, by these means.

Mr. TRUDEAU: Well, I must say that depends on the type of offence. It may be an offence in itself to drive when one has a certain percentage of alcohol on one's breath and if it is statistically determined that many accidents are caused by those who have imbibed too much alcohol, it is not at all unthinkable that a presumption of guilt be based on that very fact—the fact that one person has imbibed a considerable amount of alcohol. I had therefore, proposed previously that we should consider the possibility of making an offence out of this very fact that is the fact that a person who has imbibed a great deal of alcohol has been guilty of an offence. We could then require the person who claims that alcohol does not affect him at all to establish that fact.

Mr. SCOTT (*Danforth*): How would he do that though?

Mr. TRUDEAU: Well, if he wants to prove that what is on his breath does not really correspond with what is in his blood, let him go out and have a blood test. Or let him demand that the police take a blood test and show that, physiologically speaking, his brain has not got the amount of alcohol which impairs him.

Mr. BELL (*Carleton*): By the time the issue arises, he will have sobered up.

Mr. NIELSEN: He will still be capable of instructing counsel.

Mr. TRUDEAU: Yes, but the whole issue and the whole point I am trying to make with Mr. Goyer is that if we do find that driving after taking alcohol is one of the very large causes of accidents, then it is not inconceivable that we make it a crime or an offence or at least a presumption of an offence, to have a certain percentage of alcohol on your breath.

It may be that that is the necessary test to tell citizens in general that the framework of society says that you should not drive a car if you have had more than two ounces or one ounce and, if you do so, you are in a difficult position.

Mr. SCOTT (*Danforth*): I was not objecting to that, but I agree with you that we should legislate that a certain percentage of alcohol in your blood is the offence. What I was curious about is you went on then to say it would be up to an accused to rebut it by some sort of blood test of his own. I was curious about the mechanics of it. If you are in jail and it is late at night, where do you get a doctor?

Mr. TRUDEAU: How do you do it under your own blood test?

Mr. SCOTT (*Danforth*): At the present time the only real defence is: do not take the breathalyzer.

Mr. TRUDEAU: Then you are suggesting replacing the breathalyzer by a blood test.

Mr. SCOTT (*Danforth*): I was not proposing the second alternative; I merely said that every bit of medical evidence shows that at .05 per cent the person's ability to operate is impaired and the danger of accidents is rising rapidly.

Mr. TRUDEAU: I see, but you are not proposing that second alternative?

Mr. SCOTT (*Danforth*): I was not proposing the second alternative and to get away from the whole stigma that goes with it I was not proposing it to be called impaired or drunk driving, merely that that is an offence in itself.

Mr. TRUDEAU: I thought you had said that you had been convinced of something said by Mr. Mather. What was it?

Mr. SCOTT (*Danforth*): That was the compulsory aspect of it. At first I was opposed to the compulsory testing but the more I looked into it and saw the ratio of accidents the more I felt we had to balance out the right of the individual as against the right of the community.

Mr. TRUDEAU: What compulsory testing are you prepared to accept?

Mr. SCOTT (*Danforth*): The compulsory test that is done in Sweden where, if an officer has reasonable grounds for thinking the person is not sober, he can take him before a physician and a blood test can then be conducted, and that, I am given to understand, is the only accurate measure as opposed to the breathalyzer.

Mr. TRUDEAU: Then you are going a step further than, it seems to me, I was. I say use the breathalyzer as the compulsory test and if, as a citizen, you want to have greater guarantees, it is your responsibility to say, "Well, I want more than a breathalyzer I want a blood test."

Mr. SCOTT (*Danforth*): My objection to your proposal would be that you are putting into law what I think is demonstrably an unsafe and unreliable test and this is the real danger in legislating the breathalyzer at all.

Mr. TRUDEAU: Well, excuse me, it is unreliable, according to Dr. Rabinowich's figures, in showing whether you are impaired or not. It is not unreliable as to whether you have taken alcohol in a certain percentage or not.

Mr. SCOTT (*Danforth*): Oh yes, but the principle of the breathalyzer, Mr. Trudeau, is based on an assumption that the amount of alcohol on your breath accurately reflects the amount of alcohol in your blood and, if this is not true, and we do not know this at the moment, then surely it is very dangerous to legislate into the Criminal Code an unreliable form of evidence.

That is my main submission to the committee and that is why I am glad to hear the response that experts should be called to really investigate because the breathalyzer test has been the subject of growing controversy among the legal profession for years.

Mr. NIELSEN: Mr. Chairman, I have to be at another meeting at 12.30. I am going to destroy your quorum if I go. May I move that the steering committee take under consideration the remarks of the various members with respect to the calling of expert testimony and call such expert testimony for a session of the committee, to be set at the advice of the steering committee.

Mr. SCOTT (*Danforth*): I will second that.

The CHAIRMAN: Is that a motion?

Mr. NIELSEN: Yes, I made a motion.

The CHAIRMAN: What is the motion, then, Mr. Nielsen?

Mr. NIELSEN: That the steering committee, based upon the views expressed by members today, call such expert testimony to be given to the Committee—at a time at which the steering committee may advise—including expert testimony on the mechanical means by which the various tests are applied.

The CHAIRMAN: Is there a seconder for the motion?

Mr. SCOTT (*Danforth*): I second it.

The CHAIRMAN: Mr. Scott, is there any discussion?

Mr. SCOTT (*Danforth*): No, except I would hope that members would give to the steering committee their suggestions of appropriate witnesses.

Mr. BELL (*Carleton*): I would just like to add, Mr. Chairman, that I would be very interested in seeing the legislation in countries that Mr. Mather mentioned this morning, some of them, in particular, where we would pay special attention, like Belgium, Norway, New Zealand and the five states you mentioned of the United States. I think if we could have the text of legislation before us in a memorandum, it would be most helpful.

Mr. RYAN: And Sweden.

Mr. NIELSEN: Do not forget Saskatchewan.

The CHAIRMAN: Well, Mr. Mather, if you will make that information available to us.

Mr. MATHER: I will try to do so, Mr. Chairman.

Mr. GOYER: On the motion, Mr. Chairman?

The CHAIRMAN: This is on the motion, Mr. Goyer?

Mr. GOYER: On this motion, Mr. Chairman, I wonder whether this is not a little premature? Couldn't we first try and explore whether in principle we could actually study the advisability of such tests. I am not quite convinced at the outset, and even if we had evidence from medical and scientific experts that would not solve my problem either, because I am not even yet ready to look at such evidence. I am merely looking at it at this stage, from my own legal point of view, so that is why I personally would prefer that this motion be presented after we have discussed it at a further sitting.

(English)

Mr. MATHER: Mr. Chairman, I just want to say that, perhaps in relation to what you have said, it seems to me we have two points here, in general, to consider in line with the bill. One is whether we have mandatory tests and the other is what type of test.

Personally, I was very pleased and encouraged to feel that most of the members of the committee have come to the point of view of at least not brushing aside the possibility of having mandatory tests. In fact, I think a number of the committee would agree with that as a principle. As to the type of test, this surely is a matter where we are on the right track if we pass this motion to call the expert witnesses and get all the information we can. As I have said, my own view is that I think my bill is in line with both the aspects I have touched on, namely the need for the tests and it would provide what has already been accepted in a good many places as the basis.

Mr. WOOLLIAMS: Mr. Chairman, I do not want to be placed on record that I am in favour of mandatory tests. I was glad to see Mr. Nielsen move the motion seconded by Mr. Scott and was interested in Mr. Scott's presentation. What I want to do is to hear the evidence, and that may influence me on that particular matter. So I do not want to leave the impression, because of your statement, that I am in favour of mandatory tests at the present time. I want to hear the evidence and I will weigh those facts and then I will come to a decision.

Mr. MATHER: Mr. Chairman, I think if you will check, I said that it was refreshing to me to find a number of members of the committee are not just brushing aside the acceptance of that test. This is a step forward.

Mr. NIELSEN: My motion was made and I am sure all members took it as one which in no way commits any member of the committee at all.

The CHAIRMAN: It is a fact-seeking motion.

Mr. TRUDEAU: Mr. Chairman, I want to agree with Mr. Goyer here that if we get valuable witnesses to spend our valuable time discussing the question of fact and we have not reached some kind of a consensus in law as to whether we are prepared, even under the best possible physiological evidence, to recognize some kind of a mandatory test, I think we have lost a lot of people's time.

To take an extreme example, it would seem to me very likely that the most expert witnesses would say that the only test for impaired driving was whether

you are impaired or not and it may be that a man who was 8 feet tall would need much more than two or three ounces of alcohol or four or six per cent of alcohol in his breath. I think some kind of discussion should take place before we get witnesses down here.

Mr. SCOTT (*Danforth*): Mr. Chairman, on the point that has been raised, I can understand your feelings but it seems to me that it is impossible when the subject is still in the air to decide on a mandatory test that, first of all, you have to know what kind of tests are available, how accurate they are, how reliable they are, what kind of an onus you are putting on an accused and how they are taken, the conditions under which you are to be taken and how conclusive are they. And, once that is before you, you can then say, "Yes, I am prepared to take this very important step of imposing a mandatory test." But how can you decide on it being mandatory without having all evidence? It seems to me you are operating in a vacuum or certainly you are operating blind.

Mr. GOYER: I am not prepared, at this point, to accept a mandatory test, no.

Mr. SCOTT (*Danforth*): Well, nobody is suggesting that.

Mr. NIELSEN: Well, all these matters raised by Mr. Scott bear on the principle.

Mr. WOOLLIAMS: As we have to go to another meeting at 12.30 could we ask the question?

The CHAIRMAN: I was going to ask, if the Committee would agree, that the steering committee consider the contents of Mr. Nielsen's motion that we arrange to have these experts come before the committee. No-one is committed to anything in advance regarding whether they want a mandatory act or not. It is in order to give you the information on which you can make up your mind whether it is or is not necessary to have such legislation.

Mr. TRUDEAU: Can we assume, then, that the witnesses show that tests are absolutely conclusive and that you can reach absolute scientific evidence through blood or through breath or somewhere else that impairedness does exist, that then we are prepared to vote it?

Several hon. MEMBERS: No. No.

Mr. TRUDEAU: Well, if the answer is "No" then there is no point wasting these people's time. Supposing we get the best possible physiological evidence and we cannot refute it that you can find through a blood test or a breath test whether a person is driving safely or not. If we find this evidence and we say, "Oh, well, thank you very much but we still do not want to have anything compulsory," we have lost a lot of people's time, so let us decide now if we are prepared in the extreme case of scientific evidence to accept this.

Mr. BELL (*Carleton*): No, we are not prepared to.

Mr. TRUDEAU: If we are not, then I do not see why we should get gentlemen to come down and hear it, just to question them.

The CHAIRMAN: I think, on the face of it, whatever decision we come to about the subject matter, we want to be able to say, well, we have studied and this is our opinion. When you have the evidence, you may make up your mind,

well, I am not for any compulsory breathalyzer tests at all, on account of the evidence itself. But is this a fair question? Suppose that the breathalyzer tests were one hundred per cent accurate, what would your reaction be?

Mr. TRUDEAU: Some people may well say that they are against compulsion, even in your case, now.

The CHAIRMAN: If you are against compulsory—

Mr. TRUDEAU: I am not but perhaps the feeling of the committee is.

The CHAIRMAN: What we want to find out is what does the act perceive, what is the difference between the two manners of test.

Mr. BELL (*Carleton*): The reason I mentioned the Canadian Bar Association is that they have given detailed consideration to this very matter of the mandatory nature of the test and it is their expert testimony that I want to enable me to make up my mind on this score.

Mr. TRUDEAU: And study evidence before bringing medical practitioners here.

Mr. SCOTT (*Danforth*): You will all produce the same thing.

Mr. TRUDEAU: I do not agree with the motion, Mr. Chairman.

Mr. RYAN: Let us have the question, Mr. Chairman.

The CHAIRMAN: I think we should just agree that it be referred to the steering committee.

Mr. NIELSEN: Well, Mr. Chairman, may I suggest there are certain established rules governing the conduct of committee proceedings. There is a motion before the Chair.

The CHAIRMAN: I realize that, Mr. Nielsen.

Mr. NIELSEN: If you wish me to withdraw it, I have no objection.

The CHAIRMAN: I am just asking you to agree, for very obvious reasons, if you will count noses around the table.

Mr. NIELSEN: The only way you can do that, though, in view of the fact that there is a formal motion before the committee, is to put the question.

Mr. TRUDEAU: Just be on division.

Mr. RYAN: On division, agreed.

Mr. NIELSEN: Mr. Chairman, surely the steering committee does not operate on its own, it operates on instructions from the main committee and if there is a motion I am not prepared to withdraw it. I think this is one of the most important subjects we can discuss. Could you not say that the question was carried on division? Is that agreed?

Agreed.

The CHAIRMAN: The meeting stands adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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and/or a translation into English of the French.

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

THURSDAY, MAY 5, 1966

Respecting the subject-matter of

Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles)

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles)

Bill C-87, An Act to amend the Criminal Code (Impaired Driving)

Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and

Private Members' Notices of Motions Numbers 26 and 31.

WITNESSES:

Mr. R. R. Southam, M.P., Sponsor of Bill C-26

Mr. Ian Wahn, M.P., Sponsor of Bill C-49

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Goyer,	Mr. Otto,
Mr. Asselin	Mr. Honey,	Mr. Ryan,
(<i>Charlevoix</i>),	Mr. Laflamme,	Mr. Scott (<i>Danforth</i>),
Mr. Bell (<i>Carleton</i>),	Mr. Langlois (<i>Mégantic</i>),	Mr. Stanbury,
Mr. Cantin,	Mr. MacEwan,	Mr. Trudeau,
Mr. Choquette,	Mr. Mather,	Mr. Wahn,
Mr. Chrétien,	Mr. McQuaid,	Mr. Woolliams—(24).
Mr. Fulton,	Mr. Nielsen,	

(Quorum 10)

R. V. Virr,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, May 4, 1966.

Ordered,—That the quorum of the Standing Committee on Justice and Legal Affairs be reduced from 13 to 10 Members.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

REPORT TO THE HOUSE

TUESDAY, April 26, 1966.

The Standing Committee on Justice and Legal Affairs has the honour to present its

FIRST REPORT

Your Committee recommends that its quorum be reduced from 13 to 10 members.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

(Concurred in May 4, 1966)

MINUTES OF PROCEEDINGS

FRIDAY, April 29, 1966.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 9:30 a.m., the following members were present: Messrs. Aiken, Bell (*Carleton*), Cameron (*High Park*), Forest, Mather, Ryan, Scott (*Danforth*), Trudeau (8).

In attendance: Mr. R. R. Southam, sponsor of Bill C-26.

At 10:00 a.m. there being no quorum, the Chairman, Mr. A. J. P. Cameron postponed the meeting to the call of the Chair.

Gabrielle Savard,
Clerk of the Committee.

THURSDAY, May 5, 1966.

(4)

The Standing Committee on Justice and Legal Affairs met this day at 11.10 o'clock a.m. The Chairman, Mr. A. J. P. Cameron, presided.

Members present: Messrs. Bell (*Carleton*), Cameron (*High Park*), Choquette, Chrétien, Forest, Goyer, Laflamme, MacEwan, Mather, McQuaid, Otto, Ryan, Scott (*Danforth*), Trudeau, Wahn (15).

Also present: Messrs. Grafftey, Latulippe, Members of Parliament.

In attendance: Messrs. Southam and Wahn, Members of Parliament.

The Chairman read a letter from the Minister of Industry in which the Minister referred to the interest of his department in the development of an automotive vehicle safety code. The Minister expressed his willingness to appear before the Justice and Legal Affairs Committee. The Committee accepted his offer.

Mr. Grafftey mentioned that the National Film Board had several films on the subject of motor vehicle safety and he offered to obtain the films and a list of witnesses to assist the Committee in its deliberations.

On motion of Mr. Scott (*Danforth*), seconded by Mr. Chrétien,

Resolved,—that Mr. Grafftey arrange for films on motor vehicle safety to be shown to the Committee by the National Film Board and that he suggest witnesses to appear before the Committee.

The Committee agreed that the sub-committee would recommend other witnesses to give evidence before the Committee.

The Chairman invited Mr. Southam to explain Bill C-26.

Following his remarks Mr. Southam was questioned.

The Chairman then invited Mr. Wahn to explain Bill C-49.

At 12.45 o'clock p.m. the Committee adjourned to the call of the Chair.

R. V. Virr,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, May 5, 1966.

● (11:09 a.m.)

The CHAIRMAN: Gentlemen, we have a quorum, so the meeting is constituted. The first item on the agenda is a letter which I have received from Mr. C. M. Drury, the Minister of Industry. It is dated April 20th and acknowledges an earlier letter from myself advising that certain bills and motions pertaining to motor vehicle safety have been referred to the Standing Committee on Justice and Legal Affairs. The letter continues:

—that the Specifications and Standards Branch of my Department in its capacity as secretariat for the Canadian Government Specifications Board is developing an automotive vehicles safety code and the first meeting to consider this code is to be held in June of this year. I would be pleased, therefore, to appear before the Committee to explain further what my Department is doing in this field.

Now I presume that we would like to have Mr. Drury as soon as possible to find out what his Department is doing. Mr. Scott, have you some comments?

Mr. SCOTT: Yes. In your comments, Mr. Chairman, you said that certain bills had been referred to the Committee.

The CHAIRMAN: Certain bills and motions. Did I leave out the word "motions"?

Mr. SCOTT: Well, my problem is this. I am under the impression that it is the subject matter of the bills and motions that is before us. It seems to me this opens up the whole field itself, and I was just wondering what consideration the steering committee has given to the whole way we are going to handle the problem of auto safety and the type of witnesses we are going to call. For example, I would like to get Ralph Nader here who testified before the Washington committee; he is probably one of the top experts in North America on the whole problem of automobile safety. We have an expert here in Canada, Heward Grafftey, who certainly ought to be called.

The CHAIRMAN: The matter has not been considered specifically by the steering committee. The letter was before the steering committee and no specific action or policy was devised, but it does appear to me—in view of the fact that Mr. Grafftey has a motion, Mr. Mather has a motion, Mr. Wahn has a bill relating to the safety devices on motor vehicles, Mr. Southam has a bill relating to the same—it all relates to the subject matter of these four items which we are going to have to consider. My own personal opinion is that it will be relevant to have this evidence.

Mr. SCOTT: I beg your pardon.

Mr. CHAIRMAN: It will be relevant to the subject matter of what we have to consider to hear what that particular department is doing in devising a code. I am all for calling Mr. Drury.

Mr. Grafftey mentions that the government should give consideration to that.

Mr. MATHER: Mr. Chairman, I can see no real conflict of ideas here. Personally I would like to have the Minister here as soon as possible, and it would be valuable to him perhaps to see what we are discussing and valuable to us to understand something of what the government has in mind and while he was here I think we could proceed with consideration of the calling of witnesses as Mr. Scott has suggested.

Mr. SCOTT: The first thing is to call the Minister, Mr. Chairman. I am all for having him here so we can look at his voluntary code, but what I was wondering about is just how we are going to proceed through this very complicated field. Should the Committee, or the steering committee, not meet and try to devise some orderly method of investigating the problem rather than just hear witnesses here, there, and everywhere. I mean I think we should try to find out the magnitude of the problem. We have got all kinds of material here showing the type of problem that exists. We should devise some orderly method of going into the problem and try to find some solution.

The CHAIRMAN: Actually, we have had only two meetings, you might say, of the Committee in which we have heard evidence. As you know we had to adjourn the last meeting for lack of a quorum, and also it has been difficult to get the steering committee to meet to discuss these things. I have been more or less going along with the material we have before us, asking the movers of certain bills and the sponsors of certain motions to appear before us. I believe in that way in the end we will have considered the subject matter of the bills and of the motions. That is the position right now. For example, I did try to get in touch with Mr. Grafftey but he was away. We now have been in touch with each other. I know when he is available and so on, and he will be coming to explain his motion to the Committee. I know Mr. Mather is only too anxious to explain his. Mr. Wahn is here; Mr. Southam is here and I think that that covers all that we have in the way of bills and motions.

Mr. SCOTT: Before we get into the subject this morning I was wondering if there is any information available to us as to the progress being made by the Committee in lining up witnesses on the breathalyzer tests.

The CHAIRMAN: You will remember, Mr. Scott, that at the last meeting we adjourned owing to a lack of quorum. There was a report from the steering Committee which was not dealt with because the members considered there not being a quorum they did not want to deal with it. That is the situation and that is one of the things that we will be taking up right away. Yes, Mr. Grafftey.

Mr. GRAFFTEY: Mr. Chairman, apropos of your remarks about the Minister coming, I can only say that it will be very, very helpful to the Committee if he appears as soon as possible. I only suggest this—and I hope possibly we might get concurrence—that I could furnish to the Steering Committee some of the people who have been working with us, Mr. Scott, in this whole field in the last three weeks they have given me a fairly definitive list of witnesses we might

call, both in Canada and the United States: the top medical experts, legal experts and legislators in the field. Now, I express a willingness—you could term it as helpful—to supply this list that has been prepared for me in contemplation of such activities in this Committee to the Steering Committee and you could use it as you deem proper.

● (11:15 a.m.)

Secondly, Mr. Chairman, I would like at this time to ask, in the Committee's wisdom, if when some of us testify on this general area, if we could produce short films before the Committee. I know that this is a new idea possibly but the National Film Board have developed some top work on car injuries and deaths. Dr. Gikkas of Ann Arbor, Michigan, with Dr. Mosley of Boston, has developed some top film work in terms of the microbe—the car—in this epidemic. I do not want to take any more time of the Committee apart from giving you this list of witnesses we might call. I would just like to suggest to you, sir that I would be only too happy to make arrangements with the Film Board to project what I think are some significant films before the Committee as we consider this whole field. I just suggest this.

The CHAIRMAN: I would be glad to have general expression of opinion on that matter.

Mr. SCOTT: I now move that the Committee take advantage of Mr. Grafftey's suggestion and that in addition to witnesses we do have the National Film Board come over and show us the material they have. I know a little bit about it and I think it would be tremendously useful.

The CHAIRMAN: Secunder?

Mr. CHRÉTIEN: I second the motion.

(Translation)

Mr. O. LAFLAMME: I would like to draw the attention of members of the Committee to the fact that this bill before us this morning is a very important one. This bill might require very profound study by members of this Committee at the present time but nevertheless I remind myself of an experience we had in the Banking Committee. For 4 days members of the Committee studied a bill incorporating the Bank of Western Canada. For 4 days we were listening to witnesses and after that the bill was passed in the Committee. It went back to the House where, being a private bill, it was simply talked out by three members. Now we have here a very important bill for all members of the Committee. We will have taken the trouble to study it attentively, to hear witnesses and to take a decision on it. Now since it is a private bill will it not meet exactly the same fate in the house, if three members rise for 20 minutes each to undo all our work here? We will have been put in the position as having inquired into something, without being able to take the responsibility of any decision. So, I think this is very important for us to find out once and for all if every time such bills come before us, private bills that are very carefully studied in Committee, with very important evidence put on record, witnesses heard, and considerable expense incurred, they will meet the same fate on third reading if there are three members who, for reasons best known to themselves, undo all the work accomplished by the Committee by speaking 20 minutes each.

That seems to be my experience. So I think that the Committee should take a decision so that we can be given the assurance in this Committee that if we worked at and studied the bill and finally arrived at a decision, that decision will of necessity be endorsed or disposed of by the House. Or will this whole procedure be made ridiculous by three members saying they do not agree and preventing it from passing.

(English)

The CHAIRMAN: I can not give you any assurance on that, of course. Our report will go back to the House and I presume the usual concurrence will be asked and the report will be debated. What happens from there on, why I wouldn't care to make any comment.

Mr. SCOTT: These Bills have received only first reading.

Mr. CHAIRMAN: I know and they have to get second reading and so on if they are going to eventually pass into law or be dealt with. I think we had better proceed along the way we are and report on the subject matter of the bills and on the conclusion we come to in respect to them. The same thing applies in respect of the notices of motion. I think that this evidence we are getting is for the purpose of enabling us to give the House the benefit, for example, of our opinion on impaired driving, which Mr. Mather brought up. What is our opinion about his proposed change in the law? Are we in favour or are we against it and if so what are our reasons pro and con? That is the way it appears to me at any rate.

Mr. OTTO: Mr. Chairman, if we are to think that these bills, any of these bills, will be passed, I think would be deluding ourselves. The purpose of this Committee, as I take it, is to impress the government with facts and with arguments so that they will introduce measures. Since we have little power here except to examine, I do not think we should expect in our deliberations that any of these bills will, indeed, be passed by the House.

Mr. MATHER: Mr. Chairman, if I might say a word on this point. I think the idea behind encouraging members who have bills and resolutions, as I have and others have on traffic safety, to send them more or less to this Committee was to get the early and concentrated attention both in the House, in the Committee and in the public mind, of the seriousness of the general subject with which they all deal. As to what will happen to them if or when they get to the House or get through this Committee, I think you are quite right, we can not say, but I do feel that the attention we will get by working as we are now doing together on this general subject can only be beneficial.

Mr. LAFLAMME: Mr. Chairman, I could have been misinterpreted. I do not say that after the bill has been passed by the Committee it will be approved by the House. I did not say that. The only thing I said was that the House itself will have the opportunity of approving the bill or not.

The CHAIRMAN: There is no question about that. We are debating the motion of Mr. Scott, seconded by Mr. Chrétien, that we accept Mr. Graftey's offer of securing evidence of T.V. or whatever character it is, for the use of the Committee—so that we may be better informed in dealing with the subject matters referred to us. Is there any further debate on that motion?

Mr. IRWIN: Mr. Chairman, there is just one point I think I should bring up and that is what about this Committee being a committee of record in this respect? Should there be a duplicate of the film filed with our records or is this not a consideration?

The CHAIRMAN: I don't know how it could be a matter of record. Maybe Mr. Grafftey might be able to answer that.

Mr. GRAFFTEY: Well, it is hard to answer; maybe we are setting a precedent. I do remember in the United States in front of the Senate Committee, when Mr. Hoffa testified, he had a film in his hand and I seem to recollect that he handed it to the clerical staff of the Committee for record.

Mr. SOUTHAM: Mr. Chairman, as you know I am vitally interested in this discussion with respect to the proposed measures regarding safety of the public on highways. I am very pleased that we have this intimation from the Minister that he would like to appear before us. I substantiate and support Mr. Scott's suggestion of bringing witnesses. I was particularly impressed with his reference to Mr. Nader who I do feel and I think Mr. Grafftey would support me in this contention is one of our best experts in this field on the continent and also the remarks made by Mr. Mather and Mr. Grafftey in this respect. I think that we should have the benefit of all the expert advice and witnesses that we can have in presenting this problem to the government for their consideration, and we hope in due course that they will take action and incorporate it into whatever legislation they see fit.

Mr. SCOTT: Mr. Chairman, before we go any further, I suggest—and no doubt you have already considered it—that you as our Chairman might consult with Senator Magnuson in the United States who headed up a very important series of hearings in this whole field; no doubt he might be interested in the work of this Committee.

The CHAIRMAN: I will take that as an observation. I don't think it is relevant to the debate as on this particular motion. All those in favour of the motion as proposed? Contrary, if any?

Mr. MATHER: I don't know if the motion was made to welcome the Minister to our deliberations.

Mr. SCOTT: That was in the motion. There was some comment on it and Mr. Grafftey—

Mr. MATHER: We make our own rules.

The CHAIRMAN: Will you include in your motion, Mr. Scott and Mr. Chrétien that we invite the Minister to appear as a witness and explain what is going on in his Department?

Motion agreed to.

Then Mr. Mather could you give the Committee information regarding the supplying, at a future date, information regarding legislation of certain countries?

Mr. MATHER: I am seeking that but I have not as yet secured the information.

The CHAIRMAN: Then there was a motion by Mr. Neilsen, "experts to testify on mechanical means by which various tests are applied." The Clerk of the Committee has called the Police Department in Ottawa. The breathalyzer experts are available here, that is in the police quarters in Ottawa; demonstrations can be given to members of the Committee at the Police Station, Waller Street. The breathalyzer machine cannot be moved. There is no blood testing done at the police station. Now, that is the situation in regard to Mr. Nielsen's motion. Is there any comment? Does any member of the Committee want arrangements to be made to go to the police station to watch one of these breathalyzers in operation or not?

Mr. RYAN: The Law Society in Toronto I believe had the facilities brought before them by the Province. I just wonder if there should not be a check made at Queen's Park to see if we could not have some better equipment for our purposes here.

The CHAIRMAN: I would not want to make any arrangements unless there is a general concurrence of opinion that they would like to go to one of these demonstrations and see it in operation. If there is no such concurrence, well, I think we had better drop it.

Mr. NEILSEN: I will be glad to do the talking.

Mr. SCOTT: Mr. Neilsen is already a monopoly on that position. Well, I do not know whether it is necessary to go and watch a test actually being given, although it might be interesting. I would suggest that what we are more interested in is the expert evidence that goes to the whole root of the breathalyzer test itself. Since our last meeting I have had numerous communications come in from people in the field outlining more than I had thought the basic uncertainty of the test itself. I would like to suggest to the Chairman that he contact not just the police department who are already convinced of the efficacy of the test and are not interested in questioning it except having it made compulsory, but the National Research Council where some very good work, I understand, has been done in investigating the reliability of this test. What we are really interested in is medical testimony. What we need is some biologists to come here because I am now informed that the breathalyzer test does not measure alcohol at all, that all it really measures are other ingredients in the blood and in the breath that arise from oxidization. That there is no way of knowing from the breathalyzer the amount of alcohol that a person has either on their breath or in their blood. It seems to me that what we are interested in is the type of scientific evidence to go after reliability of the test itself, and I think it would be useful to have people from the Attorney General's Department to go into this whole area rather than just a police officer giving somebody a breathalyzer test.

● (11:30 a.m.)

The CHAIRMAN: Mr. Mather has made certain suggestions which have been considered by the steering committee but not by this Committee he suggested or recommended that the following might be considered as witnesses. Dr. Wallace Troop of the Canadian Medical Association who is an expert on blood testing and breathalyzers. Is that right, Mr. Mather?

Mr. MATHER: That is right.

The CHAIRMAN: And is resident in Ottawa. Mr. E. H. S. Piper who is a barrister and I take it the counsel for the Canadian Highway Safety Council who is also reputed to be an expert; professor Ward Smith of the Canadian Highway Safety Council, also reputed to be an expert and connected with the Department of the Attorney General of Ontario. Mr. Mather's memo says that both Mr. Piper and Professor Ward Smith can be contacted through the Ottawa headquarters of the Canadian Highway Safety Council. He also suggests the name of Dr. C. C. Moskovitch, head of Alcoholic Research Foundation, Vancouver, and Dr. Don Penner, Department of Pathology, the Winnipge General Hospital. Now, that has not been dealt with by either the steering committee or this Committee as to whether we want to call these witnesses or we want to call some of them and whether we want to consider calling other witnesses. I will be glad to have your views. I think you have all got a copy of this, haven't you? You should have if you haven't.

Mr. MATHER: Mr. Chairman, I do not disagree with my colleague Scott on calling all witnesses possible pro and con this test, but I think the immediate point we might look at is whether any of us would like to go and see how the breathalyzer test is actually administered. I for one would be quite willing to do that. I think it might be interesting. It would not influence our decision on whether we want it administered.

The CHAIRMAN: Probably arrangements can be made and those who want to do that can do so. I think it is a matter of their own personal wishes I do not think—

Mr. BELL(*Carleton*): Mr. Chairman, my understanding is that this whole matter was referred to the steering committee and I suggest that it be considered by the steering committee and they come forward with a plan of action for us and then at that stage we can discuss it. It seems to me, with great respect, that we have lost nearly half an hour this morning just going around in circles on these matters and until someone takes the responsibility of bringing a plan forward, we are not going to get anywhere.

The CHAIRMAN: I think your comments are very much in order. The thought has been going through my mind too but that is the way it has been handled up to the present, Mr. Bell. We have got the situation on our doorstep. If you want to refer it back to the steering committee, that is fine. I had an idea that Mr. Scott would probably want some additions or suggest witnesses and if he wants to make them now to the steering committee, I think this would be a good time to do so.

Mr. SCOTT: Yes, I will supply you with the list, Mr. Chairman.

The CHAIRMAN: Well, then is it agreed that this matter go back to the steering committee to study the witnesses that we should call, in particular to deal with Mr. Mather's bill and—

Mr. SCOTT: Should the steering committee go further and actually contact the witnesses and find out who is available and when you bring the report back give us some idea of when they are available, when we are likely to interview them and sort of a timetable for the whole thing. We don't want you to come back and say we recommend these witnesses.

The CHAIRMAN: Mr. Woolliams, you will recall, wanted us to get the information or whatever could be supplied by the Canadian Bar Association. They have dealt with this matter of breathalizers and blood tests and so on. It was suggested Mr. Merriam be contacted to see what was available. Well, these things will be done. It is just an illustration of what happens though when you cannot get a quorum. Things do not proceed as fast as one would like.

The next order of business is to invite Mr. Southam to explain Bill No. C-26 and following his presentation and questioning to ask Mr. Wahn to explain Bill No. C-49. That will be followed by a general discussion. Mr. Southam. I think you all have a copy of his brief.

Mr. SOUTHAM: Mr. Chairman and members of the Committee, it is my pleasure to present for your serious consideration Bill No. C-26 which is in effect an act to amend the Criminal Code and, more particularly dealing with "safety devices for automotive vehicles".

The purpose of principle of this proposed bill is to protect and save life in so far as it is possible to do so, and I suggest that one way to assist in reaching this desirable end is to make it mandatory by law to have all motor vehicles including cars, trucks, motorcycles, or similar type vehicles that are manufactured or assembled in Canada, equipped with all tested and proven safety devices now presently recognized as about twenty in number.

Mounting concern and widespread alarm is evident here, in United States and in Great Britain in recent months due to the ever increasing slaughter of human life on our highways. Typical of this concern was expressed in a news item appearing in daily papers across Canada in January, 1966, in which an associated press report stated in headlines as follows—

49,000 traffic deaths in the United States sets record.

The item went on to state that the record toll of 49,000 traffic deaths in the United States last year was reported by the national safety council. The council said 1,800,000 persons suffered disabling injuries in 1965 motor vehicle accidents. The economic loss was calculated at \$8,500 a million—\$5,500 million of this was in wage losses, medical expense and overhead insurance costs.

One has only to look at our own dominion bureau of statistics or Canadian highway safety council statistics, or to pick up almost any daily paper at random to have these alarming figures verified.

I personally became interested in this serious situation several years ago when Dr. Kucherepa, representing a Toronto riding and a former colleague, placed on the records of the House of Commons not only his personal views, but those of the Canadian safety council, and many other private citizens who were becoming aware of this serious problem at that time. Following up my concern in the matter I wrote to the department of health, education and welfare, public health service, division of accident prevention, Washington, D.C., in the spring of 1965, and received a copy of a number of bills and resolutions that had been placed before the United States senate in connection with this matter of grave concern to the safety of the people on our public highways, and more particularly as it related to safety devices on automobiles. Upon receipt of this information I discussed with Dr. Ollivier and his assistant as to what might be the best approach in formulating a bill to deal with the matter here

in Canada, and it was upon their advice that we decided that an amendment to our Canadian criminal code through a private member's bill would be the most practical way to initiate a debate on the subject. As a consequence my proposed Bill C-26 was developed and placed on the Order Paper, that would be January of this year.

I might say herewith that I was more than pleased to find out later that my colleague, Mr. Heward Grafftey, member of Brome-Missisquoi, was also pursuing studies along the same line. This was demonstrated when he appeared on the program "This Hour Has Seven Days" late last fall and was interviewed at some length in connection with his views with regard to safety devices on automobiles, and might I be allowed to say, Mr. Chairman, that he did a very commendable job in presenting the point of view on this programme.

I would also like to say that two other members of the House, Mr. Barry Mather, who has a resolution on the Order Paper No. 26, under the date of January 20, and Mr. Ian Wahn, a private member Bill No. C-49 under the date of January 24 on the Order Paper, dealing with the topic of safety devices on automobiles, demonstrating their deep concern with this serious matter of death on our highways.

Criticisms of auto companies have been mounting steadily in recent months as more and more people become aware of what could be done by auto companies to protect them. Auto companies, themselves, have made many advances in safety testing and new safety devices for cars in recent years, but there is still widespread reluctance, I feel, on the part of car manufacturers to incorporate any or many of the safety devices into their vehicles, due to the economic factor involved.

It is understandable that when the inclusion of new safety devices is voluntary, auto manufacturers in order to present a more competitive price for their product on the market would feel inclined not to increase the wholesale price of their car by including safety devices as standard equipment.

Herein lies a basic principle of my Bill C-26. If it was made mandatory that all motor vehicles in Canada should have these safety devices included, they would at once all become competitive as to price insofar as the buyer is concerned.

Mr. Chairman, in order to support my contention that our government should give serious consideration to the passing of legislation to make it mandatory to have Canadian automotive manufacturers include all tested safety devices as standard equipment on automobiles, may I point out that our great neighbours to the south presently have a Senate committee making comprehensive study of the same problem. It is interesting to note that our fellow colleague, Mr. Heward Grafftey, was invited to the United States during the Easter recess to give testimony before this committee relative to what action might be taken in this respect in Canada, and other information pertinent to the general problem.

It is also interesting to note that Mr. Ralph Nader, a 31 year old Washington lawyer after intensive study in the matter of safe cars, wrote a book entitled "Unsafe at any speed" which, in so many words, is a denouncement of what he called Detroit's deliberate sacrifice of safety on behalf of

hot-selling stylishness. It would appear that the research by Mr. Nader was so authentic that it raised the alarm of General Motors who have now been called on the congressional carpet because of their unorthodox activities in placing detectives on the trail of Mr. Nader to see if they could get what one might almost term "blackmail evidence" in order to quieten him.

Actually, in effect, the result of General Motors questionable practice in this case was to propel the entire subject of automobile safety further into the public limelight and to step up the pressure for Federal testing and safety standards.

I would also like to suggest at this point, Mr. Chairman, that whether or not our federal authorities feel that the time is opportune to enact legislation such as proposed by Bill No. C-26, we should at least take a leaf out of the United States book and establish a federal subsidized research program similar to that underway south of the border.

It is interesting to note that much research is presently underway in the United States in centres such as the University of Minnesota, University of Los Angeles, Wayne State University, by the Liberty Mutual Insurance Co., besides that presently going on in the United States Senate in Washington to which I have referred.

This, Mr. Chairman, completes my arguments for the moment in support of my bill and I would be only too happy to answer further questions or make further comments in connection with the principle involved when it is under discussion by members of the Committee.

The CHAIRMAN: Thank you very much, Mr. Southam. You have now agreed to subject yourself to questions and I see Mr. Otto has his hand up and wants to ask some questions.

Mr. OTTO: Mr. Chairman, I wonder if I could ask Mr. Southam a question in connection with the first part of his comments where he says "not fully equipped with the following safety devices, seat belts and anchorages therefor". Have you any figures, Mr. Southam, as to the number of people who already have seat belts but who do not use them or who do use the seat belts?

Mr. SOUTHAM: No, I have not actually. I just have the knowledge that most members of the Committee I think have in this respect and that is that information has come to our attention in the last year or two to the effect that cars equipped with seat belts have fewer fatal accidents. On the basis of medical evidence, they anticipate or more or less arrive at a figure that about 30 per cent less fatal accidents occur under some circumstances with people that wear them, but nobody has any figures, I do not think, to indicate actually how many people use their seat belts.

Mr. OTTO: Have any tests been conducted? From my recollection I think I have ridden in hundreds of cars over the past four or five years, equipped with seat belts, and only on one occasion do I recall the driver actually fastening the seat belt. I do not put this to you merely to contest the idea of seat belts but I wonder if you have given any thought or any consideration to the idea, not only to the installation of seat belts but to seat belts which if not fastened and not used will make the car inoperative. In other words, there has been this idea suggested in many of the articles that seat belts should be such that they have

to be fastened in order to get the car going. I thought you might have some figures of the percentage of people who have seat belts but do not use them which would give us some idea of the effectiveness of just having seat belts installed.

Mr. SOUTHAM: No, I do not think there has been anybody who has been able to arrive at those figures—I have not seen any.

(Translation)

Mr. J. P. GOYER: Could we be told what is the proportion or percentage of cars manufactured in Canada?

(English)

Mr. CHAIRMAN: Can you answer that, Mr. Southam?

Mr. SOUTHAM: I would like to hear the question again, Mr. Chairman.

● (11:45 a.m.)

Mr. GOYER: No, do you have any idea of the percentage of motor vehicles fabricated in Canada?

The CHAIRMAN: You mean by the year, do you?

Mr. GOYER: Yes.

Mr. SOUTHAM: I have not that figure—I would like to put this into focus. There are a number of causes of fatal accidents, of course. I think the first thing is what we often refer to in a slang sense as the nut behind the wheel. This is something that we cannot legislate on entirely or to discuss too lengthily but we know it is one of the basic problems as far as fatal deaths are concerned. The next are the highways themselves and the provincial laws regulating traffic control and so on, which is another field. When you get into the field of fatal accidents—once the accident has taken place whether it is a fatal accident or a serious injury, and medical science is called in to allocate the cause of the death, then this is where the pertinent figures come out that prompt me—and I think people like Mr. Grafftey and many other people—to look at the situation. When you look at the medical statistics you see that many deaths are caused by what they call backlash or a person being thrown into the windshield and so on. Now, this is where the safety belts, for instance, come into the picture. Medical science by statistics indicates that when people do use them, fatal accidents are cut by roughly 25 to 30 per cent.

Another statistic shows that the little arm that holds your rear vision mirror protruding from the ceiling of your car, when an accident takes place, penetrates the skull. Many people have been thrown against the windshield and against dashboards and consequently we have had padded dashboards which help to eliminate this. It is also very interesting to note that knobs projecting from the instrument panel, for instance, the controls of your radio, have penetrated the human skull causing a fatal accident. If a car has been rolled over, medical statistics indicate that the door handles and knobs protruding from the side of a car have fractured skulls, and so on. So that this is the field that I am concentrating on rather than the number of cars as far as the automotive statistics are concerned. As far as the law is concerned, it is not mandatory that it is just optional that automotive companies instal seat belts—

Mr. BELL (*Carleton*): I do not think, Mr. Chairman, that Mr. Southam has dealt with the point that Mr. Goyer is interested in and I am very much interested. May I put it this way. This bill deals only with vehicles which are manufactured in Canada. What was Mr. Southam's reason for not applying it as well to the importers of vehicles from abroad? Was that merely an oversight or was it intentional? Following from that, what part of the problem does this bill really deal with? I think that was Mr. Goyer's point.

Mr. SOUTHAM: Well, I think I must admit, Mr. Chairman, that in the wording of my brief here I should have used the phrase "for sale in Canada" no matter where they originally were manufactured or imported from, and so on. The fact that they are sold to the Canadian public.

The CHAIRMAN: I shall call first on Mr. Mather and then Mr. Forest, Mr. Chrétien and Mr. Graftey.

Mr. MATHER: Mr. Chairman, I was just going to say, in relation to the statistics on the use of seat belts, I am not sure but I think we could secure something on that subject from the Canadian Highway Safety Council or the Canadian Automobile Association. I think they have looked into that field. I will try and get that.

Mr. SCOTT: This might be helpful to the Committee. I have some material from the congressional record and it states that if a person is thrown from the car, the chance of death is five times as great, which seems to point out what Mr. Forest has been saying that research shows that if you do not have adequate seat belts your chances of being killed are five times as great in the event of an accident.

Mr. OTTO: Does the congressional record state that the seat belts are in the car or the seat belt is fastened on to a person?

Mr. SCOTT: Well, we cannot make the nut put them on. What we can do is require that they be installed.

The CHAIRMAN: Instead of having the Chairman write or the secretary of the Committee write, is there any reason why, Mr. Scott, and other members of the Committee who like yourself are referring to the congressional records you can not write and ask for that information, put the information you want in the words that you want it in, and then supply that information to the Steering committee who, in turn, can place it before this Committee.

(Translation)

Mr. LAFLAMME: This bill applies to the question of cars manufactured in Canada when we know that at least two-thirds of the cars used by Canadians are manufactured outside Canada, and that other countries would not apply the same restrictions. Are we then to require Canadian manufacturers to fit these security devices to vehicles which would not be used here nor in the cars after they are exported? So how can we possibly make applicable a bill the principles of which I approve, in the interests of greater safety, but the provisions of which would apply only to cars manufactured in Canada?

(English)

The CHAIRMAN: What the Committee is supposed to do is consider the subject matter of the bills, and decide on what we see is good in them, what we approve of, what we see is bad in them or defects in them. Then we report on

them. But we do not do anything more than that. We report on the subject matter. We may, for example, say, well this bill would not affect automobiles manufactured outside of Canada. Then you could have automobiles coming in which would not have these safety devices.

Mr. LAFLAMME: Not only that; they could be manufactured in Canada and sold outside in a country where they do not insist on having those things.

The CHAIRMAN: That is the job of the Committee, as I see it. Mr. Forest, I believe you have a question.

Mr. FOREST: My questions were asked by Mr. Bell and Mr. Laflamme.

Mr. CHRÉTIEN: I wanted to ask a question about why you put an exception for the buses.

Mr. SOUTHAM: I am not too well versed in the law in this respect but in looking at some of the evidence and literature that I have been reading with reference to the investigation in the United States, I found that apparently they excepted buses. I do not know whether it is because they are so large and they are public conveyances or not but they took it out of the field, I think, of the private automobile and vehicle. I am not sure why this was done but I felt that I would be maybe overstepping the mark here as far as presenting my private members bill is concerned if I included buses in this bill.

The CHAIRMAN: Mr. Grafftey and then Mr. Bell.

Mr. GRAFFTEY: I was going to ask the same question. I would like some very brief questions of the witness, if I could consider Mr. Southam as a witness in this instance. First of all, I am also very doubtful about the exception of buses because early this morning I was looking at some research forms we were going over. We saw a head-on crash between two school buses, going 25 miles an hour—we simulated cars with dummies—and those children in the back of the bus who did not have seat belts went right through the front window. They travelled a number of yards and scientific research seems to prove to us in our research studies at Cornell, U.C.L.A. and Harvard School, that we should certainly mandate the seat belts on buses. I do not think at this stage, without calling more technical witnesses, we should get into the debate too much. I am doubtful about it. I think maybe future witnesses could clear up just why you have got the notation on buses.

Mr. OTTO: That is only for buses.

Mr. GRAFFTEY: "Seat belts and anchorages therefor; padded dashes and visors, except on buses". That is except on buses in 226B. It seems to me it would include seat belts.

Mr. OTTO: I think Mr. Southam answered the question about padded dash and visors except on buses so it is only the padded dash and visor.

Mr. BELL (*Carleton*): The way the bill is drafted you have to put seat belts on buses but you do not have to put padded dashes.

Mr. OTTO: That is what it seems.

Mr. GRAFFTEY: All right would you add a colon or a comma in there. Then I would say the same thing would apply. I would wonder why padded dashes and visors would not be on buses to protect the driver of the bus anyway.

The CHAIRMAN: You were going to ask questions. You are now submitting arguments.

Mr. GRAFFTEY: No, I would like to know why.

The CHAIRMAN: Ask Mr. Southam why he did this or did not do it.

Mr. GRAFFTEY: Yes, Why, Mr. Southam, have you limited your description of mandatory features to about twenty items?

Mr. SOUTHAM: Well, here again, it is a relative figure. Since we have not set up a test bureau here in Canada, to actually come out and officially designate what is a safety item, and so on, we had just to arrive at some figure. I discussed this with Mr. Ollivier and he thought that to demonstrate the intent and the principle of the bill this was a relatively sound figure to arrive at, and we did go into this. We had quite a discussion with the law officers of the Commons to get something that was reasonably comprehensive to initiate the debate, as I say, to amplify this whole problem.

Mr. GRAFFTEY: Were the law officers of the crown in touch with the latest scientific information in this regard which indicated there were only approximately twenty features that were already scientifically proved?

Mr. SOUTHAM: Well, actually, Mr. Grafftey, we used some statistics that I got from the department of health and education and welfare of the public health services division of the accident prevention department in Washington, D.C., listed as 20201. We are actually relying more on outside research than what we have done in Canada in this respect.

Mr. GRAFFTEY: That is right. You have no more conclusive evidence to give the Committee on why you have put exceptions in there for buses?

Mr. SOUTHAM: No. I mean no more than that Dr. Ollivier in his wisdom and in reading what law there was and the act as he saw it now—I do not know just where he got his information—he felt that this was the way it should be worded. As I say, not being versed in legal matters, I would not like to go into that detail of it. But this, of course, is an interesting discussion. I am one hundred percent with the idea that if buses could be included or any other automobile vehicle that is transporting the public on our highways, public highways, it should be finally incorporated in any legislation that the government might see fit to bring in, in this respect.

Mr. GRAFFTEY: You did bring before the Committee just a few moments ago testimony about the effect of wearing seat belts. Am I to understand that the moment a person attaches his seat belt, in your view, he reduces the possibility of death by approximately thirty percent?

Mr. SOUTHAM: This is a good estimate as far as the present information we have is concerned. This is, as I say, based on the medical reports after the fatal accident has taken place or serious accident where people have become injured. They have been found in their car with their seat belts on. These statistics were

compared with other statistics previous to this where they did not have seat belts on. In a similar set of circumstances, the accident was fatal; for instance, being thrown out of the car, and so on.

Mr. GRAFFTEY: Have you any statistics, Mr. Southam, which would indicate the percentage one reduces the possibility of injury when one puts on a seat belt; from New York state, for instance, where they have made seat belts mandatory?

Mr. SOUTHAM: No, I have not. I am sorry.

Mr. BELL (*Carleton*): I am interested, Mr. Chairman, in the constitutional aspects of this bill and I gather that Mr. Southam has had pretty lengthy discussions with the law clerks. Is it the view that Mr. Southam has that this bill is in pith and substance criminal law and would be so held, or is it in pith and substance a matter of property and civil rights?

Mr. SOUTHAM: Well, Mr. Chairman, to answer that question, Dr. Ollivier did discuss this point with me and he felt that any proposed legislation dealing with this problem should come under the Criminal Code. He felt that this was the only way to make it effective. That was his advice and I took his advice on that matter.

Mr. BELL (*Carleton*): His advice is that this is in pith and substance criminal law.

Mr. SOUTHAM: That is right.

The CHAIRMAN: Mr. McQuaid, Mr. Scott and Mr. MacEwan.

Mr. MCQUAID: Mr. Southam, in your bill you speak of recessed dash instruments and control devices. Now I presume you mean there that control devices must be recessed too. Now, just what control devices have you got in mind?

● (12 noon)

Mr. SOUTHAM: Well, some of our automobiles, for instance, have a gear shift where the control is protruding, for instance. There are some on the dash; any instrument that helps to control your car that has a knob or metal projection. It has been held by medical authorities that these are basic causes for the accident becoming fatal once the accident is in process, such as a crash or side-swiping or anything else. It is an all-inclusive term as I understand it. Does that answer your question?

Mr. MCQUAID: Of course, the steering wheel, for example, is a control device.

Mr. SOUTHAM: Now, this is a very interesting point, Mr. Chairman. I believe that Mr. Grafftey and other people who have been doing research on this will support me in this contention. Automobile companies right now, I think one or two of the major companies, are developing a telescopic steering device. In case of an accident the impact of a person against it will cause the steering column to telescope in effect; in other words, break the blow against the chest wall, for instance.

Mr. MACEWAN: Just following up what Mr. Southam had to say, Mr. Chairman, I just want to ask him this. Do you believe, Mr. Southam, that an amendment to the Criminal Code is the best way to enforce the safety measures?

Mr. SOUTHAM: Yes, from my experience in talking to people and driving a car myself and the general indifference on the part of a lot of people, I think the only way that this could be made effective is to make it mandatory, by law in the Criminal Code; make it mandatory, that these safety devices be incorporated in our cars and, of course, then it is up to the individual to take advantage of them or not. That is where the element of freedom comes in; I mean freedom of action. A person does not have to put on a safety belt but if it is there, why, the chances are that he is going to get accustomed to using it. If the other automatic features, recessed dashes, recessed instruments for opening and closing the windows, for instance, padded dashes and all these other things, are there: he has no control of these. The safety devices are built in. He is automatically protected. He has two features. You take the head rest, swings from the ceiling, seat belts and certain types of safety devices, they are left to the option of the passenger himself whether he uses them; but there are a number of other safety devices that could be built in. There is no question about it, on the basis of the information we have now, they would save a lot of lives.

Mr. MACEWAN: Now, finally—and this is hypothetical because we have to hear the Minister, Mr. Drury, on this—if the Minister proposes to bring before Parliament a type of safety code for this type of vehicles in Canada, what would you say to that? How should that be presented? Should that be incorporated as part of the Criminal Code?

Mr. SOUTHAM: Well, I feel that our neighbours to the south are quite a bit ahead of us in the study of this matter. I have mentioned in my brief the various places at which these studies have already been undertaken. I think that Mr. Drury in his wisdom, and with the advice of the government, should set up a safety device testing centre here, make a study of it, get all relevant information, bring in legislation making it effective and then incorporate the information from time to time in any legislation that would be passed, as far as safety devices are concerned.

Mr. MACEWAN: By separate legislation or by effecting amendments to the Criminal Code, if I like it or not. That is all. I do not expect you to answer that.

Mr. SCOTT: Mr. Chairman, what I wanted to say is not so much a question to the witness because, Mr. Forest, we are really using your bill, as you know, as a sort of a vehicle to open up this whole field, but I was interested in the constitutional question Mr. Bell raised. I would hope that we would not get bogged down in our hearings here in the whole problem of the constitutional enforcement, because I do not think any of us are under any illusion as to the powers of the Committee. We can hear evidence; we can make recommendations, but we have no power to legislate. Really in our hearings here we should not be too concerned at the moment with whether or not recommendations can be legally enforced.

It seems to me we have two problems facing us. We have, first, an educational problem of trying to point out to the public the whole need for safety in motor vehicles, and in some way try to counteract the brainwashing that has gone on by the motor companies in inducing the public into accepting beautiful cars instead of safe cars. The Committee can do a great public service in the form of education by our hearings. In this case we should not worry too much about how the matter will be brought into legislation. If we can come up with recommendations that are sensible, and after we have looked at the problem, come up with a solution, then we can worry about how these are implemented either in cooperation with the provinces or something else at a later date. I would hate to see us get bogged down initially in worrying about the constitutionality of it, whether it should be under the Criminal Code, whether it should be by way of export policy or import policy or regulations in that fashion. Again, I think we are getting into the same problem that we had with the breathalyzer; we can wander all over the place and never really come to any conclusion.

The CHAIRMAN: With regard to the conflict of jurisdiction, I have a letter from the minister saying that either he or one of his deputies would be glad to appear before the Committee, and answer any of these legal problems, or give their views on these legal problems, if we, in our wisdom, thought we wanted them.

Mr. BELL (*Carleton*): I do not think there is any danger of getting bogged down with one brief question on this subject.

Mr. SCOTT: No, but I know how we love this.

Mr. CHAIRMAN: Well, I think we have to keep within the terms of our reference.

(*Translation*)

Mr. CHOQUETTE: I would like to ask the witness, something that has rather struck me, and that is that in this amendment we are asked to make an infraction of manufacturing. It seems to me that that is rather incomplete, because we cannot stop people from manufacturing an automobile if, for instance, it is just for trial purposes. It seems to me that in this drafting, the test is incomplete. We should refer to "manufacturing with a view to use", because it seems to me that it is rather clear that this section is somewhat inspired by sections 221, 222 where it is said that there is criminal negligence only in those cases where the person involved has been criminally negligent in the actual operation of the automobile. In other words, it is necessary for the car to be on the public highway. Somebody who would be engaged in trials, who is manufacturing a car, and who has not been taking the measures provided for under this amendment, should not be found guilty just because he was manufacturing a car. I hope you understand this shade of meaning. It is not just the mere manufacture that should be a violation of the law. I think we should state that quite clearly in the bill, since we are dealing with manufacture with a view to the sale of automobiles. I do not know whether my friend, Mr. Graftey, understands this shade of meaning. First of all, do we have a standard definition throughout this country of an automobile vehicle? Could the ski-do manufacturer, for instance, be liable to conviction on a criminal charge? For

instance, if we talk about ski-dos, may I just digress a little, Mr. Chairman. I do not know whether the translator is giving the idea that I want to explain. The point is that the ski-do manufacturer for instance would be guilty of a criminal offence under this bill as it stands at present because there is no clear-cut definition of a motor vehicle in the Criminal Code. For I suppose it is a matter of administrative law. Mr. Laflamme, what would be the definition of a motor vehicle in the province of Quebec? Is it not a matter of administrative law?

Mr. LAFLAMME: Yes, it is in the Motor Vehicles Act.

Mr. CHOQUETTE: It is a Provincial act in Quebec. So there the definition of an automotive vehicle is quite clear. You will understand when I say that there is no such definition in the Criminal Code. Under sections 221 or 222, if we find somebody drunk and driving a car, then it could be pleaded that the automotive vehicle is not defined. That is why we have been careful to state that it is the operation of the car that is involved.

(English)

Mr. CHAIRMAN: That is criticism of the drafting of the bill and that is something that we will have to consider. We will have to consider the subject matter of the bill. Is this a proper approach to the problem? What is our view on that? That is what we will be reporting back to the house, I would take it.

Mr. CHOQUETTE: In that case, without asking for an answer of the witness, can I just suggest to the Committee that there exists a difficulty which is rather a thorny one. If we were to leave the text as it stands now, because it is certainly not possible to convict anybody of having manufactured an automotive vehicle which does not meet these conditions. We shall have to establish some kind of a link between the manufacture and the intention to put it for sale. We cannot just say, "manufacture a car", but we should say, "manufacture a car for the purpose of selling it." That is what I wanted to make quite clear.

Mr. CHAIRMAN: We will get to that stage maybe some time later on. We are not a court and we are not determining the legal effects of the bill. We are considering the subject matter of it, and if we consider the subject matter, then we make a recommendation.

Mr. CHOQUETTE: Yes, I entirely agree but I thought this was the right time to bring up that point in the drafting of the bill.

Mr. CHAIRMAN: —we have Mr. Wahn here.

Mr. CHOQUETTE: What would you say about that, Mr. Southam? Have you anything to say about that?

Mr. SOUTHAM: Well, the only thing I can say, Mr. Chairman, is that this is a draft bill dealing with the subject under discussion, provided for me after lengthy discussion with the law officers of the Crown. I am sure that it will have flaws in it. There is no doubt in my mind. All that it does is to attempt to open up the discussion. I am very pleased that the government saw fit in their wisdom to cooperate with people like Mr. Wahn, Mr. Mather, Mr. Grafftey, Mr. Scott and other people who are all involved in this general topic, and referred this to our Committee for discussion. All we are doing is keeping in step with public opinion and, I think, public demand, in the interest of safety. Our great neighbours to the south are already in the throes of a similar debate through a congressional committee. I would like to add here, Mr. Chairman, in support of this whole principle, that there is an inconsistency some place here in Canada—it

may be in the states too—in the various modes of travel, for instance, comparing automotive travel with air travel. Immediately there is an accident in air travel with a plane falling to the ground and a loss of life from one to one hundred or a hundred and thirty, whatever some of the big accidents have been, we immediately send this great alarm; great public concern arises. Our department of transport investigators, aeronautical experts and people, everything in the country is called in and hundreds of thousands of dollars are spent on what was the cause of this fatal accident on the basis of the machine itself; in other words, the airplane. Now, if we are so concerned about loss of life in air travel, we should be equally or more concerned with the loss of life through inadequacies in vehicles like automobiles, or any other type of vehicle that the public use on a public thoroughfare. For instance, we will have thirty, forty or fifty people killed on a week end but they are killed at various intervals and places over Canada and there does not seem to be the same concern as if they were all killed at one time. Why is there this inconsistency? I think people are becoming aware of the fact that we should pay just as much attention to automobiles, because in the course of a year there are many more people killed in fatal accidents in cars on our Canadian highways than there are in air transportation.

(Translation)

Mr. GOYER: Mr. Chairman, with the good intentions of the mover in mind, would it not be a good idea to take up all bills which refer to the safety of motor vehicles, and study their contents as a whole, all together. In any bill we could take up the best provisions, study them, and then take up and propose a most complete bill, as I said, an omnibus bill for the consideration of the House? It seems to me at first sight, that this Bill is incomplete, and there may be some other bills that are incomplete, but once we have studied them all together, then perhaps we could re-cast them as one and have an overall bill.

(English)

The CHAIRMAN: The reason is, I think, that when we get down to it we will be able to make a report which will tie together the various things which are maybe not at the present time right before us for discussion but which are all related. I hope the report will be a credit to the legal profession; we will deal with it in that way. We will want to make a comprehensive report.

Mr. LAFHAMME: About questions, Mr. Chairman, to Mr. Southam: In your last safety device you say outside rear view mirror of the driver. Are you really sure that this is a safety device? How can outside mirrors be the cause of accidents?

Mr. SOUTHAM: Well, I think the thought here, Mr. Chairman, is that possibly the use of an outside rear view mirror is safer because of its location on the outside of the car. Medical statistics again indicate that when an accident takes place the rear view mirror which normally has been suspended from or fastened to the roof of the car from the inside is in such a position that a person getting thrown against it and therefore suffers a skull fracture, and so on. The rear vision mirror on the outside is in a safer location. I did not go into this in detail but it was one of those safety devices that was listed in what is already considered a safety device in the United States.

● (12:15 p.m.)

Mr. SCOTT: Is it not a fact that the lack of an outside mirror constitutes a blind spot?

Mr. SOUTHAM: Yes.

Mr. SCOTT: You are not suggesting that the inside mirror be deleted.

Mr. SOUTHAM: Well, I am not too sure about that. There is an argument there but I agree with you. I think that we would be better advised to have both, one on the inside and one on the outside. That is my personal opinion.

The CHAIRMAN: Well, if there are no further questions of Mr. Southam, on behalf of the Committee I want to thank you, Mr. Southam, for your presentation and for your cooperation in answering questions. You were of great benefit to the Committee and when we are studying your bill, why, your observations will be considered. Thank you very much.

Now, we have Mr. Wahn with us. He has Bill No. C-49, an act to amend the Criminal Code (Dangerous Motor Vehicles). If it pleases the Committee, I would like to call on Mr. Wahn to present his views in regard to this bill.

Mr. MATHER: Mr. Chairman, it is a little after twelve. I wonder if it would be possible to do that.

The CHAIRMAN: Well, as I said, I left it to the Committee. I would like to have Mr. Wahn proceed if it is possible, but I realize members probably have a timetable and they say, well, I will be through with that committee at a certain hour, and they like to adhere to it. We do not want to lose the benefit of Mr. Wahn's evidence which I am sure will be of great assistance to us all.

Mr. SCOTT: Mr. Chairman, just before we hear Mr. Wahn—I am all for hearing him—I wonder if the Chair would take under advisement some consideration of how we are going to proceed in this field. We will hear the bills, and so on, but then is there not some way we could sort of compartmentalize the hearings; that is, have some sort of timetable of areas of discussion so that we will not endlessly repeat. For example, I would like to see one session devoted to statistical evidence of the problem, of the nature and the number of accidents; lay out the problem that confronts us in the whole field of motor safety. Then, perhaps call in the Minister, of course, but then call in the heads of the automobile companies to see what they are doing.

What I am suggesting, and I am not making myself too clear perhaps, is that we do not wander all over the field every time we have a meeting; that the steering committee try and put it in sections so that for one set of hearings we will deal with a particular aspect of the problem and then move on to something else. Otherwise we will be wandering all over the field every time we have a meeting, and we will not come to any conclusion.

The CHAIRMAN: Certainly, it would be very desirable if we could do it. We have the privilege to hear the sponsors of the bill, and the motion to appear is a plain subject matter from their point of view. What you are mentioning is supplemental. As a result of what they tell us, we may feel we should make inquiries in other quarters. I was hoping that in a good many cases, for example, when Mr. Grafftey appeared and Mr. Mather and supported their respective motions, they will have a lot of this material; that they have got it assembled and that they will not have to go outside this Committee to get it. At

least that is what I am hoping that they will have. They would not be proposing motions unless they did have that information for us. Yes, Mr. Goyer.

(Translation)

Mr. J. P. GOYER: I would even go much further than that. Let us look at the matter of safety belts. If after study it is determined that they are efficient and should be made mandatory on all automobiles, would we really know how to go about it to enact that into legislation? Is it possible, for instance, from the industrial point of view, to have our standards differ from those of the United States? Will car manufacturers be interested in respecting these laws? We can think of a great many laws but first of all we have to find out if they can be actually implemented in all circumstances. That is to say we can very well say this is what is going to happen with regard to automobiles but if we cannot put them on Canadian markets, now then we will be losing face. I am certainly not an expert, I cannot give you an answer on this but how are we going to enforce the law, by what means, and is it possible to differ very greatly and to what extent, from the safety standards that exist elsewhere? That is a basic problem that should concern us before we engage in a discussion as to whether we are going to accept such and such a model of safety belt.

(English)

The CHAIRMAN: Well, I would think that that is something that comes in the report. When you are considering these bills, and these motions, the way you deal with them will be based on the way you are thinking about the different problems. It may be that you will agree it is a splendid idea to do a lot of these things, but that for some particular reason it is not practical to do them. If it comes to law enforcement, why once we make a recommendation, and if it is accepted and becomes part of the law, then it is up to the people who have to administer the law to enforce it. I do not think we would want to recommend approval of the subject matter of a bill that we did not think was an enforceable bill.

Mr. MATHER: Mr. Chairman, in commenting on the point about the need for cooperation between Canada and the United States in safety measures of this type, I think this is a very important area in which we might well question the Minister when he appears before us.

Mr. CHAIRMAN: You have agreed that we are to carry on, have you, gentlemen?

Mr. IAN WAHN (*Member of Parliament*): Mr. Chairman and members of the Committee, I will attempt to be brief because of the hour. I am very happy to have this opportunity to explain to the Committee Bill No. C-49. The purpose of this bill is very briefly summarized in the explanatory note. It is to make it an indictable offence for anyone to manufacture and sell an unsafe motor vehicle for use on a highway.

Now, the discussion this morning has been most useful, because I realize now that my bill is defective in one respect; it should be extended not only to cover those who manufacture or assemble and sell but also those who import and sell. I think it should extend to importers as well.

The bill also makes it an indictable offence for an executive officer or director of any corporation—let me put it this way: The bill provides that an

executive officer or director of any corporation which manufactures and sells such an unsafe motor vehicle is also criminally responsible unless it is established that expert advice has been furnished to such executive officer or director that the model of the motor vehicle in question is reasonably safe for use on the highway.

Earlier this morning, Mr. Chairman, Mr. Bell raised the question whether this type of legislation could properly be considered as criminal legislation, and with the indulgence of Mr. Scott—I took a look at the Criminal Code after this question was raised and it seemed to me section 229 is somewhat similar. It makes it an indictable offence for anyone to send to sea an unseaworthy vessel; although it is not exactly the same it is rather a similar idea and I feel, therefore, that it is not at all unusual to have this type of legislation form part of the Criminal Code.

As all members know, concern about motor vehicle safety has increased greatly in the last few years not only in Canada but in the United States as well. This concern has affected our legislatures. Our legislatures both here and in the United States are considering the question and, in turn, this has had a highly desirable effect I think, upon motor vehicle manufacturers. As you know, in recent months a number of cars which had been sold have been called back by motor vehicle manufacturers for checking and to have defects corrected. I cannot recall this having been done before. I just mention that in yesterday's *Globe and Mail* there is a report that Chrysler of Canada announced that its dealers are recalling about 11,000 cars in Canada for inspection of their front suspension systems. I believe these were cars imported from the United States, which underlines the importance of the change which I think should be made in this bill if it ever comes before Parliament.

Mr. SCOTT: May I ask you a question?

Mr. WAHN: Yes.

Mr. SCOTT: Would the provisions of your bill extend to the sale of used cars, which is where a lot of the real hoodwinking and crookery goes on in the used car field? Would your bill deal with used car sales?

Mr. WAHN: No, it does not go that far, Mr. Scott; it is restricted to those who manufacture or assemble and sell. It would not apply to used car dealers nor would it apply to a new car dealer who just sold. I thought the responsibility should be imposed firmly upon the manufacturer or assembler and also I believe now upon the importer, because they would have the facilities to make certain that the vehicles are made safe, rather than upon the dealer who merely sells the vehicle.

Mr. SCOTT: What do you mean by an unsafe vehicle?

Mr. WAHN: Well, rather than attempt to list specific safety devices, I have left this question to the court, and again I felt that this was not at all unusual. In our criminal legislation there are many instances where, for example, a ship is unseaworthy or not, it is left to the court to decide, based upon all the evidence which is presented to it, based upon whatever expert testimony may be advanced. It seemed to me that this was the most flexible provision that I could introduce.

Mr. SCOTT: Then you are not restricting it to safety features. Your bill would go at mechanically unsound cars?

Mr. WAHN: Yes, my bill would extend to any vehicle which was unsafe for any reason whatsoever, bearing in mind the circumstances in which it is designed to be used, the technical ability of the industry to produce a safe vehicle, the potential speed of the vehicle and that sort of thing. It is not restricted to safety devices; it is more general than that, Mr. Scott.

Now, the increasing concern in recent years is probably due to the extent of the problems involved in automobile safety. In 1965 there were about 400,000 reported motor vehicle accidents in Canada. It is estimated that for every reported accident involving property damage of \$100 or more, there is one not reported because estimated property damage is under \$100. It is estimated that in 1965 the total reported property damage would be about \$120,000,000. In Canada, the statistics show that one traffic injury is recorded every three and a half minutes. Three traffic deaths are recorded every five hours in a year.

It is estimated that in 1965, the total cost of motor vehicle accidents to our economy was close to \$600 million. These figures are taken from a highway accident summary 1965, recently published by the Canadian Highway Safety Council. In the old days young men used to be warned of the dangers of high living and told to avoid wine, women and song. This advice, unfortunately, does not work with regard to automobiles, because statistics show that in 1964 28 per cent of the traffic victims were pedestrians. So it is no longer good enough to be virtuous and to abstain; you have got to be lucky as well to survive.

Mr. MATHER: There are some drunk pedestrians as well, too.

● (12:30 p.m.)

Mr. WAHN: Each year the death toll, the injuries and the economic loss increase. May I give you the figures compiled by d.b.s. for the years 1960 to 1964. First, the reported number of accidents to the nearest thousand: 1960, 248,000; 1961, 267,000; 1962, 311,000; 1964, 363,000, and, as I have said, 1965, almost 400,000. Persons injured, again to the nearest thousand: 1960, 90,000; 1961, 99,000; 1962, 111,000; 1963, 126,000; 1964, 140,000.

Persons killed: 1960, 3,283; 1961, 3,426; 1962, 3,883; 1963, 4,210; 1964, 4,652, and they have increased again in 1965. Perhaps you would be interested in the total property damage, the way it has increased: in 1960 it was \$81,700,000 to the nearest thousand dollars; 1961, \$84,700,000; 1962, \$93,700,000; 1963, \$103 million; 1964, \$118 million and it increased to about \$120 million in 1965.

The population and motor vehicle registrations, of course, increase each year and that is one reason for the increased number of accidents. It appears, however, that the accident rate is increasing at a faster rate. For those who may be interested I have a graph comparing the rates of increase listed under motor vehicles; vehicle miles travelled, persons injured and persons killed. The conclusions are summarized by d.b.s. in a report published in 1963, where it is stated: "Although there were substantial increases between 1961 and 1962 of 16.5 per cent in the total number of accidents, 10 per cent in the number of fatal accidents and 13.3 in the number of persons killed, these increases should be considered in relation to the expanding motor vehicle population and the

increasing use of these vehicles. On this basis total accidents per one million vehicle miles in 1962 increased by 10.2 per cent over 1961 while fatal accidents and deaths per 100 million vehicle miles increased by 4.6 per cent and 7.9 per cent respectively over the same period."

So the accident rate cut off more steeply than would be justified upon the basis of increased number of motor vehicles and increased travel.

In 1965 the bureau reported: "Considered in relation to the increase of 3.2 billion in the number of vehicle miles travelled between 1963 and 1964, the rate of increase of traffic accidents was 1.5 per cent, fatal accidents, 2.8 per cent and persons killed, 4.8 per cent." So this was not quite as bad in the later period. In 1965, I think, the rate of accidents continued to increase not unduly in relation to the increase in the number of vehicles and vehicle miles travelled.

The CHAIRMAN: Apropos of this problem, I understand that we can go on with the evidence even though we have not got a quorum.

Mr. SCOTT: Do not put this on the record.

The CHAIRMAN: It is on the record now. Is that the consensus of opinion that it is quite within our jurisdiction to let the witness complete his statement? Here is Mr. Trudeau now, so we have no problem.

Mr. MATHER: Mr. Chairman, the problem is solved here, but there may be others, including myself who will have to leave shortly. It seems to me that we have made good use of our time with Mr. Wahn and I for one would be quite happy to digest the information he has given us thus far and resume consideration of his bill at our next meeting.

The CHAIRMAN: I do not know if that would appeal to Mr. Wahn. Are you prepared to go ahead?

Mr. WAHN: Anything that is satisfactory to the committee is satisfactory to me, Mr. Chairman.

Mr. BELL (*Carleton*): I do not think we should hurry him.

Mr. SCOTT: No, certainly not.

The CHAIRMAN: Fine, then I will leave the questioning until the next meeting.

Mr. WAHN: The report prepared by the vital statistics branch also states that motor vehicle accidents accounted for the greatest single cause of accidental deaths in 1963; almost 44 per cent of the total accidental deaths. Motor vehicle accidents continue to account for all of the increase in accident fatalities, being the leading cause of death among those 15 to 50 years of age; such is the magnitude of the problem which this committee is considering. It is not limited to any province, it is Canada-wide, and federal legislation would seem to be required. That is why the bill I have sponsored attempts to deal with one aspect of the problem by an amendment to the Criminal Code.

Now, with motor vehicle accidents there are three major elements to be considered: the driver, the road and the motor vehicle. For years emphasis has been placed on educating the driver. And that is as it should be, but nevertheless accidents continue to increase. In the last few years we began to realize the importance of building safety into our highways. Now the time is overdue to

take a long and critical look at the motor vehicle itself. It is almost impossible, of course, to exaggerate the importance of the automotive industry in our economy. Indeed, it powers our economy and is the major provider of employment? Clearly any legislation which is suggested must be responsible and sound.

Since we are moving toward a continental market, our legislation will be influenced to some extent by developments in the United States. Fortunately, however, concern about this problem has been even more evident in United States than in Canada, so I would think that our legislation would move along parallel lines. It seems clear that automobile safety can be increased without any serious danger to the economic health of the Canadian automotive industry. I think this is recognized now by the industry itself. In yesterday's *Globe and Mail* there is a report of a speech made by Mr. Henry Ford who said: "I think it is fair to say that until very recently most of the initiative for the improvement of traffic safety came from the automobile industry. Nevertheless, with the benefit of hindsight, I wish that we in the industry, had done even more, even sooner." He went on to say: "The U.S. auto industry did not act soon enough and vigorously enough to help combat the rising toll of highway accidents." So I think it can be assumed that the automotive industry is aware that something must be done. One reason is that public pressure is coming, as a result of the consideration of this matter, before legislatures and committees such as this.

Could I take just a very few seconds to refer to the brief which one of our colleagues, Mr. Heward Grafftey and others, prepared and published last July, in which it was pointed out that the accident and crash research institute of Cornell University has shown that the leading causes of injury were in order of descending importance: instrument panel, 25 per cent; steering assembly, 21 per cent; windshield, 15 per cent; door structures, 13 per cent; ejection, 12 per cent; backrest of front seats, 7 per cent; top structures, 3 per cent; front corner post, 2 per cent and rearview mirrors, 2 per cent. I think when we consider this type of thing we realize that a great deal of improvement can be made without unduly increasing the cost of motor vehicles.

Some members may have seen the safety prototype vehicle which was on display in front of the Parliament buildings for some time and also in the lobby of the Chateau Laurier. I think most of us who saw it and examined the safety features that were incorporated, felt that many of these could be incorporated by the automotive manufacturers without undue cost and without rendering the vehicles any less attractive.

Turning now to the bill, it proposes a very short and simple amendment to Section 221 of the Criminal Code, which already deals with the dangerous operation of motor vehicles. It would make it an indictable offence for anyone to manufacture or assemble, and sell a motor vehicle for use on the highway if the motor vehicle is unsafe, having regard to all relevant circumstances, including the potential speed of the automobile, the circumstances under which it is likely to be used and the technical ability of the motor vehicle industry to build and equip safe motor vehicles. It seemed to me that this would provide a flexible test capable of adaptation with the development of the industry. In the final analysis, the decision would be made by a court of law which would have the benefit of expert testimony. Courts are accustomed to this type of test.

For years courts have held manufacturers liable in civil actions, in certain circumstances, where they have manufactured defective or dangerous devices. The test can equally be applied in determining criminal liability. Because automobile manufacturers are corporations, it seemed desirable to impose responsibility also on their executive officers and directors, but only fair to give them a defence where they can establish that they have good reason to believe, on the basis of independent expert testimony, that the cars produced by their companies are safe. Again, this is not an unusual provision.

Under our Companies Act and Securities Act, liability has been imposed on directors with protection accorded to them if they can establish that they acted on expert advice and in good faith. I would anticipate, Mr. Chairman, that if this amendment is adopted, in due course independent automobile testing agencies would be developed, perhaps financed partly by grants from the federal and provincial governments and other interested bodies, not including the automobile companies, and that these would make a major contribution to motor vehicle safety. I believe, Mr. Chairman, that the bill is responsible; that it takes a sound approach to a vitally important problem. I hope it will be supported by the committee.

The CHAIRMAN: Thank you very much, Mr. Wahn. I think we have agreed that we will postpone questioning Mr. Wahn or asking him for any further explanations. I do not know whether that would be done at our next meeting but we will have an arrangement with Mr. Wahn and that is understood. I would like to have a meeting of the steering committee after the orders of the day, if that is possible. I see that four members of the committee including myself are here. I know Mr. Woolliams is out of town. Is it agreeable to you, gentlemen, to come to my office this afternoon?

Agreed.

The meeting is adjourned.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

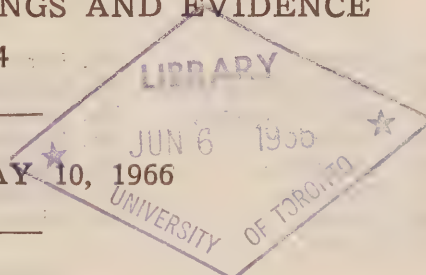
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

TUESDAY, MAY 10, 1966



Respecting the subject-matter of

- Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).
Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).
Bill C-87, An Act to amend the Criminal Code (Impaired Driving).
Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and
Private Members' Notices of Motions Numbers 26 and 31.
-

WITNESSES:

Mr. Barry Mather, M.P., and Mr. Heward Grafftey, M.P.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Otto,
Mr. Asselin (<i>Charlevoix</i>),	Mr. Laflamme,	Mr. Ryan,
Mr. Bell (<i>Carleton</i>),	Mr. Latulippe,	Mr. Scott (<i>Danforth</i>),
Mr. Cantin,	Mr. MacEwan,	Mr. Stanbury,
Mr. Choquette,	Mr. Mather,	Mr. Trudeau,
Mr. Chrétien,	Mr. McQuaid,	Mr. Wahn,
Mr. Fulton,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Goyer,		

(Quorum 10)

R. V. Virr,
Clerk of the Committee.

ORDER OF REFERENCE

FRIDAY, May 6, 1966.

Ordered,—That the name of Mr. Latulippe be substituted for that of Mr. Langlois (*Mégantic*) on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, May 10, 1966.
(5)

The Standing Committee on Justice and Legal Affairs met at 9.55 o'clock a.m. this day. The Chairman, Mr. A. J. P. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Forest, Honey, Laflamme, Mather, McQuaid, Scott (*Danforth*), Stanbury, Trudeau, Wahn (11).

In attendance: Messrs. Mather and Grafftey, Members of Parliament.

The Chairman presented the Second Report of the Subcommittee as follows:

The Subcommittee on Agenda and Procedure recommends:

(1) That a witness be called from the National Research Council to testify on Breathalyzer Tests.

(2) That a witness be called from the Canadian Bar Association.

(3) That Mr. E. H. S. Piper and Professor Ward Smith representing the Canadian Highway Safety Council be called as witnesses before the committee.

(4) That Dr. Wallace Troup of Ottawa be called to testify before the Committee.

On motion of Mr. Mather, seconded by Mr. Laflamme,

Resolved,—That the Second Report of the Subcommittee on Agenda and Procedure presented this day be adopted.

On motion of Mr. Scott, seconded by Mr. Mather,

Resolved,—That reasonable living and travelling expenses as well as a per diem allowance be paid to Messrs. E. H. Piper and Ward Smith appearing before this Committee in accordance with the scale of expenses approved by Mr. Speaker.

The Chairman called on Mr. Mather who explained his motion No. 26 dated January 20. The Chairman then invited Mr. Grafftey to explain his motion No. 31 dated January 20.

Mr. Grafftey distributed a comprehensive brief entitled TRAFFIC ACCIDENTS AND INJURIES IN CANADA, and a synopsis of the brief.

On motion of Mr. Scott, seconded by Mr. Mather,

Resolved that the Brief and Synopsis presented by Mr. Grafftey be appended to this day's Minutes of Proceedings and Evidence (*See Appendices 1 and 2*).

Mr. Grafftey then expanded on his written brief and was questioned by the Members.

At 11.00 o'clock a.m., the meeting adjourned to the call of the Chair.

R. V. Virr,
Acting Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, May 10, 1966.

● (9.55 a.m.)

The CHAIRMAN: Gentlemen, we have a quorum. Your steering committee met on Thursday, May 5th. I will read the Second Report of the Sub-committee.

See minutes of Proceedings

Is there a motion to adopt this report of the Committee? It is agreed to.

Then I would call for a motion, that reasonable living and travelling expenses as well as a per diem allowance be paid to Mr. Piper and Professor Ward Smith appearing before this Committee in accordance with the scale of expenses approved by Mr. Speaker. Can I have a motion to that effect? The motion is agreed to.

Mr. Wahn unfortunately had another appointment so we will have to defer the hearing and questioning on his Bill and I will call on Mr. Mather to present his brief in regard to his motion.

Mr. MATHER: Mr. Chairman, I think that I can dispose of my presentation in two or three minutes. Resolution No. 26 is very similar to several others that either have been before us or are coming and I would be quite happy to have the Committee pass its judgement on it very rapidly so that we could get on to hear Mr. Grafftey and his much more detailed presentation. I might tell you in all honesty one of my reasons in putting in this resolution in the first place was that I felt that it would at least qualify me, as a man who was interested in this subject, to urge other members who had similar bills and resolutions to see if we could not agree to have all these bills and resolutions come to this Committee, or to a Committee where we could get immediate and concentrated attention on the subject of traffic safety. This is one of my reasons for putting this resolution in.

I could state that the resolution says that in the opinion of this House the government should consider early action to provide or promote legislation having as its aim the inclusion at the manufacturers' level of new and effective safety features in motor vehicles produced or imported into Canada. It is just a simple expression of opinion which I think is in line with several other similar expressions of opinion contained in other bills and resolutions. I do not intend to speak in support of it at all, Mr. Chairman, and whatever the Committee wishes to do about it is quite satisfactory to me. I feel that putting this resolution forward and getting the attention and help to bring this all to this Committee, has been perhaps my contribution towards our aim. It is now before

the Committee for questioning or disposal, as they see fit, of course. I think our time this morning would be better spent hearing Mr. Grafftey's presentation.

The CHAIRMAN: What is the wish of the Committee? Would you like to hear a little bit further from Mr. Mather? I think I would, if he would give us some of the supporting data that he may have on the subject matter as to why he feels this should be considered and action taken on it.

Mr. MATHER: I could give you what I think has already been said in effect by Mr. Wahn in his Bill, also what I am sure Mr. Grafftey will have in more detail. There is no question in my mind that a good many of the traffic casualties which now amount to about 5,000 a year—fatal ones in Canada arise from faulty construction of motor vehicles, and that while this is only part of the overall traffic safety picture, yet I do believe, if there were reforms along the line that were outlined the other day by Mr. Southam and Mr. Wahn, in regard to modernizing and bringing safety features into automobiles, the fatality rates would be reduced. You all have statistics in support of that general idea. I do not think there is anybody who questions it. The point in my mind is how to get some action from the Committee either in a report or in the passage of one of these bills or resolutions to help encourage the government to bring in legislation. I do not see much point in adding to what I am saying, Mr. Chairman.

The CHAIRMAN: Mr. Scott, have you a question?

Mr. SCOTT: I would agree with Mr. Mather. We do not need any more resolutions to tell us what is now an obvious fact. Following the hearings in Washington, which have made this a national issue, mountains of data have piled up showing how the car companies have hoodwinked the public, sold unsafe cars and surreptitiously recalled them without telling anybody what they were being recalled for. It seems to me an irrefutable case has already been made, notwithstanding that we will hear from Mr. Grafftey, that in this whole field we are confronted with a safety problem of the first magnitude, and we should be thinking, it seems to me, in terms of how extensive the problem is, what safety code and regulations are required and how can they be best brought into existence. We do not need too much more evidence to indicate that there is a first rate crisis.

The CHAIRMAN: Does anyone have any other comment? May I take it then, Mr. Mather, that you have placed on the record what you consider the necessary material to support your motion?

Mr. MATHER: Yes, Mr. Chairman.

The CHAIRMAN: Well, then Mr. Grafftey would you mind coming up.

Mr. GRAFFTEY: First of all, Mr. Chairman, I would like to say that although I am not a member of this Committee I welcome and thank you for the opportunity to testify.

The CHAIRMAN: We are very glad indeed to have you, Mr. Grafftey.

Mr. GRAFFTEY: I have no intention, gentlemen, of reading either the synopsis or the text that I presented to you this morning in my testimony, but it is my intention simply to file it with the Committee, and I do hope that both in

the synopsis and in the complete text that I have presented to you you will find a general outline of some of the recommendations that those of us who have been trying to study the matter have put before the government and now are putting before you, the members of the Committee.

I want to be very, very brief and perhaps go over some old ground with you before you ask some questions in relation to my testimony.

I would like, in the next ten minutes, outline briefly the problem, to tell you what we are doing, what I think should be done about it, and why so little has been done up to date.

Gentlemen, what is the problem we are discussing before this Committee now? It is an epidemic. It is an epidemic of massive proportions which in my mind must be met with massive public expenditures and massive public interest. It is an epidemic which in the last year in Canada injured a million people in the year 1965, two-thirds of whom have been permanently disabled, killed five thousand and cost the nation approximately one billion dollars. Multiply that by ten and you have got the United States statistics. Project into the future, to 1970, and you will realize that unless we do something dramatically different in our approach to this epidemic it simply means this, that every second car now rolling off the assembly lines of our nation, as in the United States, will be involved in a death or an injury-producing accident.

First of all, let us make it clear in our minds what is our job as federal legislators. As I said time and time again the provinces have a job to do. On the provincial level we must produce better and safer drivers, better and safer roads and have annual inspections of motor vehicles. This is a provincial responsibility. This job must be continued. But I believe one of the reasons we have made such little advance in controlling this epidemic is that we have left out one of the factors in our discussion, namely the microbe. If you consider the driver as the agent, the roads and the surroundings as the atmosphere, and the car as the microbe, I think you have a picture of this epidemic, in this sense. In my view we have forgotten in the past to talk about the microbe in our approach to the epidemic.

I believe that the federal government has a duty and, incidentally, has the jurisdiction. There seems to be some question now between various departments of government and the Department of Justice where the jurisdiction lies. I believe that the federal government has the jurisdiction to bring the family car, the ordinary everyday automobile, under the rule of law. Aircraft, railway rolling stock, ships, food and drugs are all under the rule of law, and by the same token I believe the federal government has the legal right to bring the automobile under the rule of law.

This epidemic is the third greatest killer of our population, after heart disease and cancer. It is the greatest killer of our young people between the ages of eighteen and thirty-five. Gentlemen, the simple proposition that I put before the Committee today, in its stark nakedness, if you will, is just this, that if the government takes its responsibility and brings the family car under the rule of law immediately, without doing any further research, if the federal government orders the automobile industry to put into the automobile at the

production stage already known scientifically proven safety features, we could immediately reduce this toll in accidents and injuries by about fifty percent. Some people say it is exaggerated. I believe firmly that we can reduce the toll by about fifty percent, that is, if the government orders right now that already known scientific safety features be put into the family car, the automobile, and will thus bring it under the rule of law. Without dramatically putting blame on anyone, let me say that some of these features have been known to the automobile industry for as long as fifteen years and yet they are not in cars now.

Why has so little been done in terms of this whole area? First of all, I said that, in my view, we have cajoled the driver, we have talked about roads, and we have forgotten the microbe in the epidemic. This is one of the reasons I feel so little is being done in terms of controlling the epidemic.

How about research? We know that we are seven to ten times more safe in the air than we are on the roads of our country today. Why? First of all, the building of the aircraft itself comes under strict federal jurisdiction in terms of safety features, as does rolling stock on railways and the building of ships. We know that pilots are only licensed after they reach definite standards of performance and safety. We know that strict federal laws are invoked relating to air traffic, navigation and control. Thus, we see the results.

But apart from that, what happened, as I have mentioned before, in the Ste. Thérèse accident just over two years ago? An aircraft crashed; unfortunately, about one hundred and ten people were killed that night—a tragic accident. Since that time the federal authority alone has spent approximately four to five million dollars trying to research the reason for the crash. And yet, gentlemen, every week on our highways over a hundred Canadians are slaughtered, and within ten or fifteen minutes the morgue wagon goes to the hospital or to the morgue and the wreckage is taken away to the junk pile. Why is not one single cent spent on researching the reasons for this accident? We do not know yet. That is why I recommended in my brief an accident research centre at the federal level. We do not know yet in any real scientific detail what causes these accidents. The automobile industry says: "the nut behind the wheel". That just is not good enough. And so I say that while the aircraft industry has this great record in safety, it is because they spend research dollars and have done something about it. We found out from the testimony before the United States Committee in 1964 when Senator Robert Kennedy cross-examined senior executives, that in 1964 General Motors had a profit of \$1,700 million and they spent but \$1,250,000 on safety research. This is one of the reasons why we have slaughter on our highways.

But let us not go into the area of blame. I have, first of all, talked about the provincial and federal responsibility. We have got to have a balanced approach. We cannot just talk about the car. We have not talked about it at all up to now, as far as I am concerned. One of the reasons that we are having a tough time controlling this epidemic is the lethargy of the public. The public feels: "it can never happen to me; it is something that happens to the other guy". Those of you who are veterans or who have been prisoners during the war, know that very often a fellow could see a fellow prisoner being shot under circumstances

that could easily apply to him, the very next morning, and yet by some quirk of human nature he would bid himself, as we do ourselves, that it could never happen to him. And so because we have a lethargic public, legislators who are unwilling to act and an automobile industry that will not live up to its responsibilities to modern society, we have not made any real headway in controlling this terrible epidemic.

In 1952, for example, we spent many, many times more to control the polio epidemic. There was co-operation between doctors, the public and legislators. But even at that time in 1952, when polio was at its greatest height, the toll in terms of death was only four percent as against the total in highway deaths and injuries. So there is public lethargy. No money is being spent on research, either privately or publicly. What about the highway safety council who were so bitter when I began to discuss the automobile? I am afraid that without getting too dramatic, I must ally myself with my colleague, Ralph Nader, when I say, that the highway safety councils and the safety leagues have done a good job in terms of trying to advocate the building of better roads; they have done a good job in terms of cajoling the driver not to be a "nut behind the wheel", but why do they refuse to discuss the building of safer automobiles? It may be because the government has not done their job in financing these safety leagues, but they draw a lot of their annual funding from the automobile industry, the tire, the oil and the parts industry, in other words, the allied industry. Well, I would say that the Canadian Highway Safety Council get about ten percent of its fee from the automobile industry. If you figure out how much they get from the oil industry, from the parts industry, and all the allied industries, as well as the insurance companies, you would go well over the—

Mr. SCOTT: You are suggesting this is silencing money.

Mr. GRAFFTEY: It is certainly silencing money. And apart from that, it is the only time in the history of the United States that an actual presidential advisory committee had this kind of prestige, we found that the Committee was staffed, financed and backed by industry-oriented people, therefore, they will not talk about the construction of a safer automobile. In Canada to-day, the president of the Highway Safety Council is the Vice-President of the Industrial Acceptance Corporation. One of the vice-presidents of Highway Safety Council is the president of the White Motor Truck Company. Do I need to say any more, gentlemen? I would like you to look at the brochure of the Highway Safety Council and see why these so-called safety establishments patently refuse to discuss the construction of safer automobiles and scream bloody murder when politicians talk about bringing the automobile under the rule of law.

These are the main reasons then why so little has been done in terms of getting legislation passed. In the United States the automobile lobby is absolutely unbelievable and so is the lobby of the tire industry. They go to Washington and say the States should establish the standards. They go to the States and say Washington has the right to create standards. They play both ends against the middle, nothing gets done and they have their way. Consequently, I think one of the great scandals of the twentieth century has been the inability of modern society and modern legislators to bring something as obviously significant as the family car, the automobile, under the rule of law.

What is being done now? I do not have to go over with you the hearings that are going on before the House of Representatives Committee in Washington and that have already taken place before the Senate Subcommittee. At first, we were talking about voluntary standards in relation to President Johnson's bill. It seems very strange that now the industry are very happy about mandatory standards. Beware, gentlemen. The industry are very happy about mandatory standards as long as they can control the body that is developing these mandatory standards, namely, the executive wing of the United States government. And may I suggest to you today that the Secretary of Commerce, who will eventually be responsible for legislating these standards, is an ex-director of General Motors. Now I am not saying that he has not been able to change his views as he passed from industry to government, but my suspicion is that he is largely industry-oriented and that the industry are only too happy that standards are going to be enforced as long as they are enforced by a wing of government that is not going to be too tough. That is why, gentlemen, I point out to you today that this is a job that legislators, and only legislators, can do. It cannot be enforced by the executive wing of government or, in the case of the parliamentary system, by our very able civil service. I do not have to tell you what is going on in Washington anymore, except that I do believe that the standards that are eventually going to come out of Congress will be mandatory standards, but I hope that the legislators are going to have a very great say in what these standards are going to be.

What is happening in New York? New York is the only State in the modern western world which, in my view, has made any real advances in terms of building a "total-type" safety car. They have voted five hundred thousand dollars through their Lower and Upper Houses for a feasibility study. Now, in my view, it is extremely important that such a non-industry body or a public authority build this prototype safety car. Right now, in Canada and in the United States, we have people drafting codes relating to safe driving standards, the building of better roads, and safety features which should go into the automobile for sale to the government and to the general public.

These codes will only be significant if the code drafters have valid data on which to base their conclusions. Up to now, they have to make reference to the industry day and night because they have no research data gathered together by non-industry bodies. Well, the industry, in their answer to me, said: "Look what we have done in terms of the 1967 cars, in the double braking and the collapsible steering column." I am not going to be a killjoy, and I do not want to blame the industry all the time, but supposing the food and drug industry tomorrow morning at nine o'clock told us, as federal legislators, that they had taken a little poison out of our food. We would want to know how much was in our food in the first place, and how much is still left in our food or drug, as the case may be. And we cannot do this unless we have non-industry correlated standards. That is why it is terribly important that a proto-type safety car be built by public authority. If we cannot get this New York State car built, it will be a major triumph for the automobile lobby. That is why Senator Spino was in New York meeting the Minister of Industry. Officials are going to come back in a very few days to meet the people in the National Research Council to see if the National Research Council cannot take a leading part in the completion of this

car and to see if Canada will not offer a few good dollars in getting it built. The Minister is going to be here in a few days to tell us what is going on in terms of code drafting in the Standards Branch of the Department of Defence Production.

Gentlemen, I am not definitive at all on what remains to be done. I have a few ideas in the brief that I put before you. I have said for a long time that the automobile industry in both Canada and the United States should forego the next production year or years costly and unnecessary style changes and devote the money thus saved to safety research.

The New York prototype car must be built. The automobile industry says that a beautiful car and a safe car cannot be built at the same time. They have often said to me: "if you want a safe car, young man, we will build you a tank that will go fifteen miles an hour." I am talking about two things. I am not talking about the inevitability of the accident, I am talking about avoiding accidents in the first place, and if an accident does take place, reducing the possibility of death or injury. I say to the industry: "Since when do proper visibility standards, proper braking standards, proper steering standards, proper door locks, and proper seats designed as they are in aircraft with driver fatigue in mind, detract from the beauty of the automobile?" As regards cars, you will see from our Cornell studies that I believe thirty-eight percent, of deaths are caused by ejection from the vehicle. Since when do proper door locks on cars, the integration of the seat to the frame of the car, the delethalizing of the inside of the car, the proper recessing and padding of dash panels—since when do these improvements detract from the beauty of the vehicle? I say that that argument on the part of the industry is pure bunkum!

Regarding the cost, gentlemen—it will be one of the last things I have to say to you—I believe the industry are trying to say: "Oh, it will be far too expensive." I believe that tomorrow morning at nine o'clock if they put already known features, the forty proven features into the automobile, this would increase the price of the average run automobile by approximately \$100. The automobile industry keep telling us what they cannot do. I believe, in a day and age when we are sending men to the moon, to the planets, into outer space, they can do quite a bit in terms of making real inroads into safety. In pith and substance what has to be done is to bring the automobile under the rule of law and order that the known safety features be incorporated at the production stage. It is as simple as that. I believe that in 1966, when a citizen buys something as dangerous and significant as an automobile, he should get all the safety and the protection that money can buy and that modern technology can and should produce.

The CHAIRMAN: I am sure we are very much indebted to you, Mr. Grafftey, for your vigorous and very effective presentation of the matter which we are considering. We have this brief before us. May I have a motion that it be appended to to-day's proceedings? We also have the synopsis. The brief and the synopsis will then be appended to to-day's proceedings.

Now the witness is available for questioning.

Mr. SCOTT: I have a couple of questions. Mr. Grafftey I am very impressed by your evidence. I take from it you seem to be suggesting to us that there has been, in effect, a sort of gigantic conspiracy against public safety involving the manufacturers of automobiles. The safety councils, you feel, are unduly influenced by them, and by parts of the executive of governments. This interests me because it would mean we were faced with a fantastic, powerful, wealthy lobby attempting to deal with this problem. Can you give us any filling in on that? For example, why is the industry so far behind? You were telling us some of these features have been known for fifteen years but never incorporated into cars. Why?

Mr. GRAFFTEY: First of all, Mr. Scott, the automobile industry in North America was probably the first major industry that really got into the area of planned obsolescence. I would like to preface my reply by saying again that the blame is joint. It is almost one of these classical tragedies. The industry should certainly share part of the blame. The automobile industry is a pioneer industry in planned obsolescence. They got caught up in annual restyling, and they are so busy restyling the vehicle that one of the vice-presidents from Detroit said: "I can sell more automobiles with \$10.00 worth of chrome than with \$100.00 worth of safety." He was as callous as that. A Detroit vice-president said this. They are so caught up in styling that only after the styling considerations are finalized is the safety engineer phoned up, and he is the most frustrated guy in the industry hierarchy to-day. The case in point is the Mustang for 1966, one of the most dangerous automobiles ever allowed on the road in terms of many things. The Mustang is put out by Ford. They had agreed on twelve basic safety features to go into the 1966 Mustang, but in the end, the stylists won out over the safety engineers and they were not incorporated into the car.

Mr. SCOTT: None of them?

Mr. GRAFFTEY: None of them. And we had reason to believe, those of us interested in the field, that this would be one of the major voluntary breakthroughs. This is one of the things that convinced me, Mr. Scott, that the industry will do nothing voluntarily. They are caught up in this tragedy of annual restyling, and it is a terribly, terribly, terribly competitive industry. All of us know this. I think the industry itself would prefer that the standards be enforced rather than be left up in the air, because if you leave the choice to the manufacturers, what one does voluntarily the other might not do and it would upset the competitive balance of one of our major industries. They are much more interested in styling than in safety. I do not believe there has been a North American car built with safety as the chief design criterion. The criterion is styling, what will please the public. How many of us here in this Committee to-day can buy an automobile without consulting our wives? The automobile industry has attacked the advertising media in terms of this sort of thing. Let us not kid ourselves; we in Canada are very snooty about the lobbies in the United States of America. A lobbyist has to register in Washington; he registers as a lobbyist and you know what he is. In the parliamentary system, all you have to do is lobby the Cabinet, forget those guys who are just members of Parliament—and that includes government supporters—and you are home free. The

automobile industry, in the last four months, has been constantly badgering the Government of Canada on the Cabinet level. They have been in their offices—I know it—on this very subject.

Mr. SCOTT: You mean this Canadian automotive industry is lobbying against safety features?

Mr. GRAFFTEY: Certainly. They do not want legislators and politicians to get into this field and tell them to do something they have not been told to do for years.

Mr. FOREST: Mr. Grafftey, could they have changed their minds recently and asked the government to pass mandatory restrictions?

(Translation)

Mr. GRAFFTEY: In my opinion, it could happen because the standards would then be drawn up by the executive branch of the U.S. Government. If the executive draws them up in true co-operation with the industry, then it does not matter if they are mandatory or not.

(English)

Mr. SCOTT: Would you put on the record, Mr. Grafftey, the names of the witnesses and experts that you think would be useful to us?

Mr. GRAFFTEY: Well, I do not know how many other bills and resolutions are going to be brought before the Committee. I have had a very useful chat with the Chairman, and I can only make this offer. I would like to talk to the Steering Committee about it. I have had some very helpful assistance in this whole field; you can be assured by looking at the brief. We have prepared a list of witnesses who we think would be useful to the Committee, in the order in which it might be useful to have them called. I will make this list available to the Chairman and to the Committee, and as I said before, I do not know how long this Committee, as it is set up, is going to be dealing with this particular area of interest, namely highway deaths and injuries as they relate to the resolution and the bills prepared by private members. But I originally thought that this hearing might have come before the Industry and Research Committee about six months ago, and I did instruct my research assistant to prepare what would be a useful list of witnesses to call. I will make available this list to the Chairman.

Mr. SCOTT: And members of the Committee?

Mr. GRAFFTEY: Certainly.

Mr. McQUAID: Mr. Grafftey, do you conscientiously feel that this man who made the statement that \$10 worth of chrome would sell more automobiles than a \$100 worth of safety speaks for the whole automobile industry?

Mr. GRAFFTEY: No. I think it was an off-the-cuff statement. But I think he might have even said it within shouting distance of some reporter who picked it up. Again, I want to say, there are three things I want to emphasize. Talking about the prevention of accidents, the reduction of injury and death when they occur, the danger we are all going to get in this Committee is that we are going to be told we are over-stressing the automobile in the epidemic. We are not. We

are talking about a balanced approach; we are talking about what the provinces have to do, but the only thing we can do in terms of combatting this epidemic is to bring the microbe under the rule of law. So while we must, I think, be very careful not to be accused of an unbalanced approach to the epidemic, we must talk about the cars.

Now I think that the industry, certainly, have their share of the blame in this whole thing. I do not think they are the only ones. I do not want to get involved in the area of blame as I said time and time again but, it is a lethargic public, legislators who have not acted and the irresponsible industry who should all be blamed. As much as I would like to be charitable with the industry, I do feel one of the things those of us who went into the field of responsibility in law are well aware of is that we have in the twentieth century an uncanny knack of delegating blame to someone else. I believe the executives of the automobile industry who have failed to put into automobiles at the production stage—no matter what the public wants or thinks they should have—features that would save lives and reduce injury, are certainly blameworthy.

Mr. MCQUAID: The blame, as I understand it is by reason of the fact that they feel if they put them in and somebody else did not their cars will be a little more expensive, and they are not going to be able to sell them as well. This is why, if these safety features were standardized, then the automobile industry would be perfectly happy to go along with them.

Mr. GRAFFTEY: Yes, I think they probably want this whole thing. Actually, the automobile industry now are getting to the point where I am sure they might be saying: "For heaven's sake, government, make up your mind and act and get this over with." That is why I am telling Mr. Drury the government must act—let us not fool around with it. I got up in the House the other day and I asked the Minister a question. I know he has a ruling somewhere on his desk from the Department of Justice, and I would bet my last dollar that the ruling says that we have the responsibility and the right to act. Are we going to fool around passing the buck between the provinces and the federal government? To me it is patently obvious that we have the jurisdiction, and it is patently obvious that the automobile industry must be getting to the point where they are saying, "O.K. fellows, you are the legislators. Show us the ground rules and we will live by them".

Mr. SCOTT: I have a supplementary question on the point just raised. If the automotive industries are suddenly desirous of mandatory standards, why have they never made any requests, or have they made requests for mandatory standards in the past, knowing, as they do, of these safety features?

Mr. GRAFFTEY: I am sure they have not, Mr. Scott. I think that they have only talked about mandatory standards in the last few weeks when they have become aware that the public are aroused. They are annoyed, and the public want action. Today the North-American public knows that safer cars can and should be built, and they are looking to legislators to take their responsibilities and act. As I said before, because of the tragedy of the annual restyling and the fact that they have gone on this hell bent for leather race, the industry will do nothing unless they are forced to do it. Now they realize they might be forced to do it and they are just lying back and saying: "Force us quickly

because we want to get out of this area into the area of mandated standards and get on with the job", like a kid, you know, who knows he is going to get a licking and wants to get the licking over with.

Mr. AIKEN: Mr. Grafftey, I think that you have indicated your views, with which I personally agree, that we have safety laws governing highway construction, we have safety laws governing driving and drivers, now we should have safety laws governing cars and car construction. There are, as I think Mr. Scott said earlier, mountains of evidence, both in the United States and here, to support that point of view. There is a great lack of safety features on cars. What I am interested in, is what in your opinion would be a good and constructive step for this Committee to take—if we agree with your presentation, and I feel we do—to get some definite tangible action in Canada towards car safety? This Committee has given this matter to date as much legislative consideration as possible.

Mr. GRAFFTEY: First of all, I would like to draw your attention again to the general recommendations we make in the brief. I think we should ask the Minister of Industry to produce his code as quickly as possible for public scrutiny. I would ask that the Canadian government do everything it can to make available National Research Council co-operation for the building of the New York state prototype car. I think this Committee could definitely ask that the government contribute financially to the building of this car. It is not good enough for us to say, "Uncle Sam, you do it", because whatever he does will affect us. I think this is a real area where we can pioneer.

One of the main recommendations in my brief relates to the establishment of National Research Council assistance. I would not want to even paraphrase it but I would like to draw your attention to the brief recommendation. I think it calls for concrete action, without getting down into the details of legislation and whether we could adopt private Members' resolutions. One single thing that Canada can do, I think, is to offer constructive National Research Council assistance in the building of the New York prototype safety car and to offer money in the building of it. I think it would be a great thing if we could clear up the problem by offering money to it before Washington does. Washington is going to, I believe, in President Johnson's Highway and Safety Bill. We were pleading for an amendment to this bill which simply meant federal funding of the New York car. It is going to come one way or another I think. I believe the car is going to be built.

Mr. SCOTT: What is the cost of building the prototype? Is there any estimate?

Mr. GRAFFTEY: Seven or eight million dollars for ten cars. And when those cars are built they will be the first cars crashed in the world that have been built with safety as the main criterion for design features.

Mr. HONEY: Mr. Grafftey, is the objective of the designers of these prototype cars related to proposed standards? In other words, am I correct in assuming that what you hope will come out of these committee meetings or meetings with the United States is that they will be told what is mandatory for the automobile industry? Now do you relate that to the building of prototype cars?

Mr. GRAFFTEY: Yes. Because in my conversations with various executives of the industry I go down a whole series of what I think are obvious safety features, such as integrating the seat to the frame of the car, delethalizing the interior of the automobile, the construction of the car so it crashes in the back and in the front into a properly constructed middle shell. What we are talking about is delethalizing the automobile and protecting the drivers and passengers: delethalizing the interior and diminishing the possibility of exterior objects coming into the passenger and driver area. This is based on two things: it is based on the research knowledge that we have that eighty-seven percent of all death and injury-producing accidents take place under forty-five miles an hour. This was the first thing that directed research people's attention to the vehicle, or the microbe in the epidemic. Once this was established from the Cornell, U.C.L.A. and Harvard studies, they talked about the automobile. Then we went to the industry and we said to the industry: "What about this? What about that? What about taking knobs out of the interior of the car? What about padding your dash panels? What about recessing your dash panels? What about integrating the seats to the frame of the car? What about this? What about that?" The standard answer that I always got was very vague: "Mr. Grafftey, we have no data that shows us this". We have not got this proof. We don't know". It was the most frustrating experience I have ever had in my life. Everywhere I went I would say to them: "Why this? Why that? The Cornell studies tell us this". They would say: "We don't know this. We have no proof of this". The moment you crash a non-industry built car and a car built on feasible design criteria, then you will be able to say to the industry: "You might not know it, we know it. Put it in the car, and we are not going to fool around anymore." We certainly would not let the food and drug industry develop their own standards in their own laboratories. It has to be done by public authority.

Can we not build and develop this prototype safety car? The people who are drafting codes in Ottawa and Washington have nowhere to go for valid conclusions. Now these guys in the Standards Branch of D.D.P. are awfully sincere, but who are they on the phone with everyday, who are down in their offices every day? The engineers of the automobile industry.

In the Canadian Highways Safety Council last week in Calgary—renowned Government experts addressed the Council on the building of safer roads and renowned government experts addressed the Council on the policing of drivers and on the educating of better drivers. Who addressed the Safety Council on the building of cars, or on the annual inspection of cars? Executives from the automobile industry. Where else, in modern society, would we let such a farce continue? And I am not blaming the industry, I do not think they are delinquent but I think we are all nuts to let this thing continue. I do not think any valid standards can be drafted until there is legislation to build this car. Up to now, I have gone to the industry up to the vice-presidential level. What you will see is that if you get a president of the industry in your room and start questioning him, he has a vice-president or a director of engineering with him. And you say: "Why haven't you done this? Why haven't you done that?" And they will say: "We have no proof for it. We don't know." You saw Ralph Nader questioning Nadler from American Motors on "Seven Days". He said: "We don't know." And they said: "Haven't you read the Cornell studies?" They said: "We

can't get them." They got them in the mail. They really do know. We have very very little data, but one of the reasons I think Paul Gikas from Ann Arbor, Michigan should testify before this Committee is that he, as Doctor Moseley did in Boston, actually had a research team photograph cars right after the death producing accidents. He photographed, I think, over a hundred accidents, the interior and the exterior of the automobile. He then got permission from the next of kin to do a reasonable post mortem. Gentlemen if you could see his films and slides! He says: "There is the automobile, the crash took place at forty miles an hour. There is the interior of the car. There is the victim lying in it and that is what killed him. It did not have to be in the car. This is our post mortem." Today, police officers, the minute a death producing accident takes place, are more interested in getting the body in the morgue wagon as fast as possible, the traffic moving and the car moved from the scene of the accident.

(10:45 a.m.)

Mr. SCOTT: And they wait for the next accident.

Mr. GRAFFTEY: And the guy who has done the greatest job in terms of getting semi-sophisticated reports is Shulman in Toronto, who has done some real work. And there are other coroners, to whom we owe a great deal of thanks, who have made their data available to me and who say something more than, "Reason of accident: question mark; rate of speed: question mark; took place, such and such, resulted in accidental death."

Mr. AIKEN: This is something that has puzzled me, Mr. Grafftey, maybe you have some view on it. It seems to me that, financially the people who have suffered most have been the automobile insurance companies, the people who pay the accident claims, the people who have been claiming for the past five years that they are going out of business because traffic is so bad, and they are paying hundreds of millions of dollars in claims for property damage and death on highways. Why have they not been involved in this? You would think that they would be the first and most interested people.

Mr. GRAFFTEY: Well Liberty Mutual of Boston have been. They did quite a pioneering job with Frank Crandell their engineer, not only in car safety but in safety in general. They developed the Liberty Mutual survival car I and II, on which they spent about \$250,000, but, it was not based on safety design. They appended features, one by one, to these cars. By and large—and I think I do not have to go any further—while what you say would seem obvious, on closer examination, some of the insurance companies have this kind of hook-up with the automobile industry so that it does not make it too profitable for them to champion the cars that I feel most of us are beginning to champion.

Mr. AIKEN: Furthermore, they have the excuse for continually increasing their premium, right?

Mr. GRAFFTEY: This could be certainly one of the factors.

Mr. AIKEN: And increasing the volume of both receipts and payments.

Mr. GRAFFTEY: A great body of evidence is beginning to build up, that we are ally the insurance companies with the general automobile industry interest.

Mr. FOREST: We saw here, two weeks ago, at the car show that Italian car. Did that incorporate most of the safety features you are mentioning?

(Translation)

Mr. GRAFFTEY: No, it was only a beginning. We saw in that car at least fifteen safety devices. But the car was brought here, to Ottawa, only in order to give an answer to industry that it is possible to build a car that is beautiful and safe at the same time. I am not saying that it is the last word in everything; it is barely a beginning. There were several safety devices in it, which proves that we can build a beautiful car and a safe car at the same time. That was an answer to the automobile industry. The automobile industry was claiming that we cannot build a beautiful and a safe car at the same time.

Mr. FOREST: Well, I think the public is more interested in beauty than in safety, even if you installed safety belts on the ceiling and so on. I don't even know whether people actually use the safety belts that are installed in their own cars. Will it be asking too much of them to require that a car that would be safe would be beautiful at the same time?

Mr. GRAFFTEY: It is my opinion, Mr. Forest, that public in general is not really kept abreast of all the developments concerning safety. For instance, tomorrow morning at nine o'clock I can tell you that at the minute you fasten your safety belt you will reduce the possibilities of traffic death by 35 per cent and of injuries by 65 per cent automatically. Well, somebody is going to tell you: "Well, there is an exception here." But the figures that we have received show that the minute you fasten your safety belt you decrease the possibility of traffic death by 35 per cent and of injury by 65 per cent. But I think, truly, that the public do not realize this. They do not know these figures. The industry and we, people in the public service, have the duty to indoctrinate, if you like, the public.

(English)

Mr. SCOTT: Mr. Grafftey may I first say that, just by way of preface to my question, you are building such a formidable case of callousness and indifference against the motor companies, that maybe you would better check to see if there are any detectives on your trail, as Mr. Nader had to do in the States, or have you checked? I do not know.

I am interested in your comments on the 1966 Mustang. That is the 66 model year which ends when?

Mr. GRAFFTEY: The 66-model year that ends, well in the Fall.

Mr. SCOTT: Last Fall, is it?

Mr. GRAFFTEY: It was brought out last Fall. Let us see, I hope I have the year correctly. It was brought out last Fall, we are still buying it, and it will be sold until the 1967 Mustang is introduced.

Mr. SCOTT: Well, could you list some of the unsafe features for us?

Mr. GRAFFTEY: I will give you one, just for an example.

Mr. SCOTT: Give us all of them.

Mr. GRAFFTEY: 25 per cent of all deaths and injuries are caused to pedestrians. I might be a percentage point off, but if you will bear with me, I will give you the approximate figure. The Mustang has a front end that will cut a pedestrian in two at 30 miles an hour. Now I am exaggerating, but I ask you tomorrow morning to go down and see a Mustang parked in the parking lot, run

your finger across it and ask yourself one question: Would you rather be hit at an intersection with the front end of a reasonably designed car, with pedestrian safety in mind, or the front end of this Mustang? This fact was drawn to the attention of the stylists, and they knowingly let that front end be incorporated into the car. But I do not like to single out any one car. The hardtop General Motors cars, for instance, are so designed that you or I cannot properly incorporate the three point shoulder harnesses, whereas the slightest engineering change in the General Motors hardtop would have permitted us to use the three point belt. Now I mean simply, Mr. Scott, that there are few people who are using the three point belt but they would if they knew how safe it was.

Mr. SCOTT: Would that information be available to the manufacturers as well?

Mr. GRAFFTEY: Oh, yes. Every automobile stylist and his design engineer know that while the lap belt is a fairly good item to have and use, it is not nearly as good as the three point belt properly installed. You can not even install it in the General Motors hardtop, but you could with the slightest engineering change.

Mr. MATHER: Mr. Grafftey, along the same line of thought, is there any substantial difference in safety in today's cars, in the cars we know about? Is there a car that is relatively safer than other cars?

Mr. GRAFFTEY: It would be unfair to get into that area right now. As Mr. Nader points out, some cars have better door locking features than others. But in the balance, it would seem that all of the industry are more or less equal. You have all read about the cars that are safe automobiles. We do know that the hardtop, because of roll-over, is more dangerous than the ordinary sedan, and you will find the statistics on roll-over, in my brief, are quite incredible. The convertible is obviously a much more patently dangerous car to be driving in. But one of the things that is becoming obvious, in the statistics we have gathered, is that the man in the light car is much less safe. The minute you have a really, really light European car, you are approximately doubling your chances of death or injury, not because it is, per se, more unsafe. In Europe, they are probably just as safe as we are in our cars in terms of basic design, because when you crash in Europe, you are going to crash probably, against another small car. Mr. Scott and Mr. Mather, if you were in an American designed automobile and you hit me in a Volkswagen, you will walk away and I will be creamed. And this is why statistics tell us, in the North American situation, that the light car driver is in a double ratio in terms of accident or death potential.

Mr. SCOTT: In what way could this be corrected?

Mr. GRAFFTEY: Well, I think this is the sort of thing we could discuss. I think it is going to be hard to correct that feature, Mr. Scott. I would be irresponsible if I got too much into the area of the technique.

Mr. MATHER: You have said, Mr. Grafftey, that we have all heard about safe cars. I have not, I must confess. I think I read somewhere that the Volvo is considered to be a relatively safe car, but this is the only knowledge I have of it.

Mr. GRAFFTEY: The Rover, it has been said in various magazines, that the Rover cars do incorporate many, many safety features. Now whether it was by design or luck, those who are more technically oriented than I am can better say.

The proof that we now have now, before us, Mr. Scott, is that safety is a rich man's luxury. The big expensive car is a heavy car, and I am not saying they are safe cars, but you are obviously more safe in a heavy car. The rich guy is more likely to be driving a more operational car. Statistics tell us that the low income fellow driving a second hand car on secondary rural highways is really driving with some of the great danger factors.

The CHAIRMAN: Now, it is eleven o'clock—

Mr. HONEY: May I ask one more question?

The CHAIRMAN: Yes certainly, go ahead.

Mr. HONEY: Mr. Grafftey, you mentioned in your remarks that the federal authority has jurisdiction in this matter. I have not considered this matter, but to me it is not obvious. Have you any authority on the matter?

Mr. GRAFFTEY: Well, I will give you my general ideas. Can we try to look very briefly at two stages? Let us say that this is an unoccupied field. Let us tackle it from the practical, as opposed to the legalistic point of view. Can anybody here imagine, in the practical 1966 society, the provinces entering into this field? I do not think you can. This makes you suspicious that they do not have the jurisdiction.

Mr. HONEY: Perhaps they are disinterested.

Mr. GRAFFTEY: Certainly, it is not all that pleasant a job to have to do. They are not only disinterested, but from a practical point of view, if you had the provinces doing this, the industry would just love it. The minute you say the provinces have the right to do it, you will have the industry going to the provincial level and lobbying for different standards in different provinces. Confusion will exist, and you will never get a uniform standard across the nation. This is how they have been able to withhold action in the United States, especially in tire standards. It would be a good thing for this Committee to consider some tire standards. The United States tire industry yelled and yelled for years for a uniform standard for tires, and they said: "Gentlemen, just give us uniform standards and we will do it". But what they were actually doing, just working with the large States, was to press for different standards at different State levels. Confusion reigned, and they went home and had a ball. From a practical point of view, I just cannot imagine anybody believing that it is only the federal government that can act in this regard.

Now from a legal point of view, let us admit that right now it is a vacant field that it not filled up. I believe that according to our constitution, when you have a vacant field, the first guy that fills it has it. Apart from that, from a practical point of view, going down to a third legal argument, I think you could look at the regulations relating to food and drugs, go back into the jurisdiction on liquor, and read some of the Supreme Court cases, you will see

that it is the federal government that makes laws regarding aircraft. I think by corollary and analogy, you could argue that the way we treat aircraft should apply to cars.

Mr. HONEY: Are there not any legal opinions on this matter?

Mr. GRAFFTEY: I think we are getting into a pioneer field, here.

The CHAIRMAN: Gentlemen, the Public Accounts Committee is due here at 11 o'clock and signalling at the door, so I think we will have to adjourn.

Will you be available next Thursday with the film Mr. Grafftey? The meeting is adjourned.

APPENDIX "1"

FULL TEXT OF BRIEF
ON
TRAFFIC ACCIDENT DEATHS AND INJURIES IN CANADA
PREPARED AND PRESENTED TO THE FEDERAL
GOVERNMENT OF CANADA

Heward Grafftey, M.P., Lawyer
C. Alexander Brown, Writer
Rheal Casavant, Television Executive.

OTTAWA, CANADA—JULY 2, 1965.

INTRODUCTION

Significant new developments in the understanding of the complex casualty of motor vehicle fatalities and injuries have prompted us to set down our knowledge and understanding of this problem, together with three recommendations for remedial action that could be taken at the federal level, for presentation to the Prime Minister of Canada, the Minister of National Health and Welfare, the Minister of Justice, the Minister of Trade and Commerce and the Minister of Industry.

This Brief has been endorsed by:

C. E. DIONNE, M.P.

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House of Commons, Ottawa

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.....
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BRIEF ON AUTOMOBILE SAFETY

In the past ten years 35,031 people have been killed in automobile accidents in Canada, and 948,850 injured. It is estimated that by the end of 1965, 4,800 more will die and 150,000 will be injured. If the present trend continues, between the beginning of 1966 and the end of 1970, 26,000 more Canadians will die on our roads and more than one million more will be injured.

Accidents are now one of the leading causes of death and injury in this, as in many other countries. It is estimated that about *half* of all cars in North America between the time they are first driven and the time they are scrapped become involved in at least one injury-producing accident.

To the present time nearly all efforts to correct this situation have been directed at drivers. In spite of this, the toll of death and injury continues to increase and there is *absolutely no* evidence to indicate that to continue to expend most of our efforts in educating, cajoling, and penalizing the driver will yield adequate results. The problem of highway death and injury must be attacked in other areas. In modern times, the techniques of epidemiology have been successfully "extended from its original restriction to the communicable diseases to a broad application of mass diseases of man; to cancer, diabetes, congenital anomalies and many others. It is not so generally appreciated that injuries, as distinguished from diseases, are equally susceptible to this approach, and that accidents as a health problem of populations conform to the same biological laws as do disease processes and regularly evidence comparable behaviour".

Epidemiological Approach

Applying the terminology of epidemiology to automobile accidents, the roads are the environment, the driver is the host and automobiles are the agents. Drivers (the host in our terms) are susceptible to human error. Therefore, there will *always* be accidents. We should try to protect drivers from the *effects of their inevitable errors* by building cars (the agents) in such a manner as to offer a large measure of protection against possible injury to occupants. The evidence indicates indisputably that automobile injury and death could be very significantly reduced approximately sixty percent if safety features *already tested and known* were incorporated into the design of automobiles.

We should not cease trying to improve the environment of this "epidemic", i.e., the highways, nor the performance of host—the driver—but priority should be given to de-lethalizing the "agent". *The driver* is the most rigid factor in the complex—road, car, driver—and the one least amenable to change. But we *can* change highways to some extent, and we *could* change cars.

Research on Injury and Fatality

Research on injury and fatality

Research done at the Accident and Crash Research Institute of Cornell University has shown that the leading instruments of injury, including fatal injury, were, in order of descending importance²:

	Approx.
Instrument Panel	25%
Steering Assembly	21%
Windshield	15%
Door Structures	13%
Ejection	12%
Backrest of Front Seat	7%
Top Structures	3%
Front Corner Post	2%
Rear View Mirror	2%

The same study showed that the main causes of death were:

	Approx.
Ejection	36%
Steering Assembly	17%
Instrument Panel	12%
Windshield	12%
Door Structures	9%
Front Corner Post	6%
Top Structures	6%
Backrest Front Seat	1%
Rear View Mirror	1%

Research done by Doctors Donald Huelke and Paul W. Gikas of University of Michigan Medical School³ confirms this. *Seventy-two percent* of all automobile crash fatality results from injury to the head⁴.

Research on automobile safety and design is being carried on at many centres, among them the University of California at Los Angeles, University of Minnesota, Wayne State University, the Liberty Mutual Insurance Company of Boston, and of course by the car manufacturers themselves. In addition, aircraft manufacturers, many agencies of government in the United States, and the Armed Forces, have sponsored or conducted massive studies on aircraft design and safety. Many of these studies are directly applicable to automobile design. In spite of this great wealth of material, however, the automobile companies have not given design of safety features priority and have largely ignored recommended modifications that would reduce the increasing toll of dead and injured. The attitude of the auto manufacturers is still that of the Detroit Vice-President who said: "Ten dollars of chrome will sell more new cars than one hundred dollars of safety features⁵." This is especially ironic in view of the fact that much of the independent research on safety and design is supported by the car manufacturers. This, however, might be just good public relations, for it has long been possible for example, to make steering assemblies which will not impale drivers whose cars collide.

The aircraft industry years ago, after studies of pilot errors, adopted standardized instrument positions and the shape coding of knobs. Still today the same model cars will have their instrument positions changed from one year to the next at the behest of style.⁶ The value of shoulder harness has been known for years. *The auto companies themselves* use them in crash tests. They have yet to be offered to the public as standard equipment.

Disc brakes are demonstrably far safer than the standard drum brakes, yet up to 1965 they have been offered only as optional equipment on *some* 1965 models, for reasons of sales and "prestige"!⁷

Criticisms of the auto companies have been mounting steadily in recent months as more and more people become aware of what could be and is not being done by the auto manufacturers to protect them.

In April of 1965 Walter P. Reuther, President of United Auto Workers, sent a letter to the Presidents of American Motors Corp., Chrysler Corp. and Ford Motor Company which stated in part: "as part of our common interest in the welfare of the industry, there goes a joint responsibility to the public that buys, or is affected by, the products manufactured in our plants by our members. Increasingly, that public is becoming concerned about the health and safety effects of automobiles."

To counter this growing criticism, the auto companies have launched a massive public relations campaign. Newspaper and magazine articles inform us of the research they are now doing and have been doing. Recently articles in various magazines have informed us that by 1967 cars will have recessed knobs on dashboards, large rear view outside mirrors, stronger door locks, dual braking systems, and uniform bumper heights. But these changes are being made *only* because the United States General Services Administration required that these and some other safety features be incorporated in all cars bought by the Government by 1967. Furthermore, these recommendations, which are, in the view of many doctors and scientists concerned about automobile safety, inadequate and diluted, have been pending for three years, and had to be fought for.

In addition, bills dealing with auto safety are pending in thirty American State Legislatures. So there is justification in asking whether these changes—which have been forced on the auto makers—are not being widely touted to forestall the passage of stringent legislation. For experience shows that the manufacturers, obsessively concerned with sale and styling, will make significant safety changes only when forced to do so. The now standard—and inadequate—two front seat lap belts were adopted only after the Legislatures of New York and several other States passed laws requiring seat belts.⁸ Anti-smog and combustion fume devices are being installed on all cars only because California passed laws making them compulsory.⁹

People who would otherwise have survived automobile accidents have been killed when tool boxes and spare tyres hurtled from their car trunks through the *cardboard* trunk walls and into the passenger compartment, breaking backs

and crushing torsos.¹⁰ Cardboard is *still* the material used to make the forward trunk walls of cars, sometimes with the addition of two thin metal cross members.

The list of correctable and dangerous shortcomings in today's cars is a long one. Nothing—no statements, no acts—emanating from the auto companies encourages anyone to believe that any great improvements will be volunteered by them. For example, they have, in their design of automobiles, completely ignored the concept of 'second collisions' derived from research done at many centres, and most notably at the Transportation and Traffic Engineering Centre of University of California. When a car collides and comes to an instantaneous stop, the driver and passengers (and also toolboxes and spare tyres in the trunk) continue to travel at the speed of the car before collision, and strike the inside of the car and each other with *exactly* the same force with which, say, a pedestrian standing in the path of the car would be struck by the car moving at its pre-collision speed.

Eighty-seven percent of traffic accidents and *forty-five percent* of traffic fatalities occur at speeds *less than forty miles per hour*. In many of these accidents the forces that tear seats loose, wreck the passenger compartment and smash occupants against each other and the interior of their cars like eggs in a barrel are of smaller magnitude than the human body could tolerate if properly protected. It is no longer even difficult for automotive engineers to build this protection into cars.⁽¹³⁻¹⁷⁾

Survival Prototype Cars

The Liberty Mutual Insurance Company of Boston with its "Survival Cars" and Pinifarina of Italy with its beautiful prototype safety car body, the Pinifarina "Sigma", have demonstrated that it is possible to design and build cars that promise considerable reduction of the risk of death and injury through ejection, collision with the unpadded or inadequately padded interior of the passenger compartment, intrusion of the inflexible steering wheel shaft into the driver area, and crushing of the passenger compartment.

Recommendations

In view of all the above, plus additional facts as stated hereunder, we urge the Federal Government to:

(1) Make provisions to establish, perhaps within the National Research Council, a Research and Development unit that would develop a prototype safety automobile that would:

- (a) offer the maximum protection against injury to automobile passengers in the event of accidents;
- (b) have the highest possible standard of braking, stability, manoeuvrability, driver visibility, and such features as would mitigate against the occurrence of accidents.

This prototype safety car would not be merely a modification of existing automobile design, *nor* would it be built on a commonsense judgment, but would be based on solid research, including research done for aircraft

and applicable to automobiles, and research done at various universities in the United States, plus other similar work being carried out in other countries.

(2) We further urge that there should be established as either a part of the above research unit, or separate but working closely with it, a committee made up in substantial part of scientists, engineers and doctors, which would keep abreast of research and advances affecting automobile safety carried on and made by universities, various auto companies and elsewhere. This committee would, from time to time, make recommendations to the government that, within a specified but reasonable time, all automobiles made in Canada or imported into Canada must have specific devices, systems or features—or their equivalent—complying with the committee's recommendations. This jurisdiction should extend over all components of automobiles, including tyres. It is urged that this committee, and the government in ruling on the recommendations of the committee, limit themselves to minimum performance specifications only, and not write mechanical specifications. For binding specifications other than performance specifications have the effect of limiting advances. Two examples of this area:

- (i) When the flashing turn signal was developed as a replacement for the semaphore arm type of turn signal, its adaptation was hampered by the fact that traffic laws in a number of places specified that turn signals should be the semaphore type.
- (ii) Changes in headlamp shape that could possibly improve night time visibility are being hindered by laws in many places specifying that automobile headlamps be round.

Federal Control

At present the Federal Government does not exercise any control over automobiles having to do with safety. Control over ownership and operation of automobiles is exercised by the Provinces. But there is no reason why the Federal Government could not exercise control by setting specifications for manufacture and importation. There are already agencies of government protecting Canadians by control of, among other things, food and drugs, shipping, railroads and aircraft manufacture and usage. There is every reason for the same sort of control to be exercised over automobiles.

Today the problem of death and injury caused by automobile accidents is more urgent than other problems currently receiving more attention; probably because it is still widely believed by the public that all that can be done is being done. But this is not the case. Until fairly recently, the problem of accidents, and specifically automobile accidents, had not attracted the attention of serious scientific investigators. The Harvard Medical School "Research on Fatal Highway Accidents" project was the first large scale study of its kind to attract wide attention.

One of the first things that the Harvard Medical School researchers discovered was that the word "accidental" is not the correct word to apply to many highway collisions, injuries and deaths, for chance is *not* the dominant

factor, and our fatalistic acceptance of injury and death as a necessary price that we must pay for widespread use of automobiles is unjustified—and deadly. This view serves as an automatic barrier to intelligent observation concerning the problem. For a great deal can be done—with cars, with highways, with road signs—but mostly with cars. This has been confirmed and reinforced by research.

(3) We further urge that the Federal Government take steps to establish, perhaps as a Branch of the Department of National Health and Welfare, or the National Research Council, a National Accident Prevention Centre, staffed with scientists from a wide spectrum of disciplines—physicians, psychiatrists, psychologists, toxicologists, engineers, physiologists, etc.—who would:

- (i) Carry on extensive and detailed investigations as to causes of accidents;
- (ii) Establish an information centre;
- (iii) Promote and co-ordinate related research in other places such as hospitals and universities;
- (iv) Make recommendations to:
 - (a) industry;
 - (b) governments at all levels on regulations and laws to prevent and reduce accidents.

Although traffic accidents would be a major area of concern for this National Accident Prevention Research Centre, it would not be its only major area of concern.

It is to be expected that any attempts to regulate automobile design and safety will be opposed with all the skill that the great wealth and power of the automobile manufacturers can afford. There is precedence for this in history. The Plimsoll Line for ships was opposed, as were air brakes for locomotives, and safety precautions for miners. When New York State Senator Edward Speno tried to have a bill setting minimum safety specifications for automobile tyres adopted by his State's Legislature, he reported that the tyre companies launched against his bill the strongest lobby he had ever seen mounted in Albany. In Washington, the Federal Trade Commission held hearings in January 1965 on automobile tyres. The hearing revealed what Senator Gaylord Nelson called a "national scandal in tyres", including the fact that size stamped on tyres do not give actual size and were never intended to. Ply label ratings have no understandable meaning. Automobile tyres for six-passenger cars have their specifications based on a load of three passengers and no luggage in the trunk. What is significant here is that the testimony of the hearings have, as of this writing, not yet been printed and published so that the public can readily buy copies. Anyone wanting a copy will have to pay \$496.00 for a typewritten transcript.

We urge that in this matter the Government consider not only the arguments that will be raised by the auto companies, but also the views of such experts as Dr. Alfred Moseley who conducted the Harvard University program; Dr. William Haddon of the New York State Department of Health; Mr. David Klein of the U.S. Association for the Aid of Crippled Children; Mr. William I. Stieglitz, chief of Design Safety and Reliability, Republic Aviation Corporation;

Col. (Dr.) John P. Stapp of the United States Air Force Medical Corps; Dr. James L. Malfetti of Columbia University; Professor James Ryan of University of Minnesota; Mr. Frank Crandall of Liberty Mutual Insurance Company; Dr. Paul Gikas of Veterans' Administration Hospital, Ann Arbor, Michigan; Dr. Donald F. Huelke, University of Michigan Medical School; Dr. Fletcher D. Woodward, University of Virginia Medical School; Drs. B. J. Campbell and Robert A. Wolf of Cornell University's Automotive Crash Injury Research Centre; Dr. James L. Goddard, United States Federal Aviation Agency; Dr. John Lane of the Australian Department of Civil Aviation.

Finally, we urge that at least serious feasibility studies of our proposals be initiated.

Conclusion

Canadians should be assured that when they buy something as expensive, important and potentially dangerous as an automobile, they are getting the greatest measure of protection that science and technology can offer.

During 1952, the worst year of the polio epidemic, the number of people killed by polio was less than 4% of those killed by automobile accidents. Yet the efforts made to combat polio exceeded by several hundred times the efforts made to reduce highway deaths. Furthermore, the efforts to reduce highway deaths continued in the same old groove. Surely if the problem was as simple as the safe driving slogans indicate, we would by now be on the way to a solution. But we are actually moving in the opposite direction. The time is long past for the abandonment of useless and dangerous presumptions. In this age, when on an average downtown street in an average North American city on any week-day, an average driver has to make a decision that could result in his—or someone else's—death about once every fifty seconds, and the traditional approaches to this serious problem are obviously inadequate, it is necessary to move in new directions. Slow evolution has no value when its cost is paid daily in pain and death.

FOOTNOTES

¹ The Epidemiology of Accidents—John E. Gordon, M.D. in *Accident Research, Methods and Approaches*—Haddon, Suchman & Klein—Harper & Row, p. 16.

² Leading Causes of Injury in Automobile Accidents—Schwimer & Wolf, *Automotive Crash Injury Research* of Cornell University, June 1962.

³ How Do They Die? Medical Engineering Data from On-Scene Investigation of Fatal Automobile Accidents—Huelke and Gikas, *Society of Automotive Engineers Paper 1003A*—January 1965.

⁴ Every Second Car—National Film Board Film.

⁵ New York Times, September 18, 1964.

⁶ Parallels Between Aviation & Automotive Safety Research—William L. Stieglitz, in *Passenger Car Design & Highway Safety*, Assoc. for the Aid of Crippled Children & Consumers' Union of U.S. Inc., 1962.

⁷ Disc Brakes from Detroit—Dennis Shattuck, *Road and Track Magazine*, Oct. '64; *Miscellaneous Ramblings*—John R. Bond, *Road & Track Magazine*, Oct. '64.

⁸ New York Times, September 18, 1964.

⁹ Built-In Crash Protection: A Design for Living—Horace E. Campbell, *Journal of Iowa Medical Society*, Dec. 1961.

¹⁰ Research on Fatal Highway Collisions—Dr. Alfred Moseley, *Papers '61-'62*, Harvard University Medical School.

¹¹ Accident Survival: Airplane & Automobile Accident Research:—Methods & Approaches, etc.—Hugh de Haven, p. 568.

¹² Op. Cit.—p. 568.

- ¹³ Mechanical Analysis of Survival in Falls—Hugh de Haven, Op. Cit. pp. 539-546.
¹⁴ The Historical Development of Crash Impact Engineering—A. Howard Hasbrook, Op. Cit. pp. 547-554.
¹⁵ Human Tolerance to Deceleration—John J. Stapp, Op. Cit. pp. 554-562.
¹⁶ Mechanical Properties of Low Density Foam as Energy Absorbers—Edward R. Dye & Milton D. Smith, Cornell Aeronautical Laboratory Inc., 1958.
¹⁷ Parallels Between Aviation and Automotive Safety Research—William I. Stieglitz, Passenger Design & Highway Safety: U.S. Association for the Aid of Crippled Children.

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Research on Fatal Highway Collisions Papers, 1962-63, Harvard Medical School.

How Do They Die?—Donald Huelke and Paul W. Gikas, Medical Engineering Data from On-Scene Investigations of Automobile Accidents. Society of Automotive Engineers Paper 1003A, Jan. 11-15, 1965.

Liability of Automobile Manufacturers for Unsafe Design of Passenger Cars—Harold A. Katz, Harvard Law Review, Vol. 69, No. 5, March '56.

APPENDIX "2"

From the Office of
Heward Grafftey, M.P. (Brome-Missisquoi)
House of Commons—Ottawa

Synopsis of a Brief Presented
Friday, July 2, 1965

to the Prime Minister of Canada, the Rt. Hon. Lester B. Pearson
Regarding Automobile Safety

Prepared and Presented by:

Heward Grafftey, M.P., Lawyer
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Wilson Southam, Television Producer

In the past ten years 35,031 people have been killed in automobile accidents in Canada, and 948,850 injured. It is estimated that by the end of 1965, 4,800 more will die, and 150,000 more injured. If the present trend continues, between the beginning of 1966 and the end of 1970, 26,000 more Canadians will have died on our roads, and more than 1,000,000 injured.

Automobile accidents are now one of the leading causes of death and injury in this, as in many other countries. It is estimated that about *half* of all our cars are going to be involved sooner or later in injury-producing accidents.

To the present time nearly all efforts to correct this has been directed at educating, cajoling and penalizing the driver. *There is no evidence* to indicate that this will yield any significant results.

There is a considerable amount of evidence, gathered by researchers at many universities, which indicates indisputably that many lives, now being lost, could be saved if safety features already tested and known were incorporated into the design of automobiles.

Research done at the Accident and Crash Injury Research Institute of Cornell University show that the *main instruments of injury, including fatal injury were*, in order of descending importance:

Instrument Panel	25%
Steering Assembly	21%
Windshield	15%
Door Structures	13%
Ejection	12%
Backrest of Front Seat	7%
Top Structures	3%
Front Corner Post	2%
Rear View Mirror	2%

The same study showed that the main causes of death were:

Ejection	36%
Steering Assembly	17%
Instrument Panel	12%
Windshield	12%
Door Structures	9%
Front Corner Post	6%
Top Structures	6%
Backrest Front Seat	1%
Rear View Mirror	1%

Research done at University of Michigan Medical School confirms this. Research on Automobile Safety and Design is being carried on not only by many universities, but also by the auto companies themselves. In addition, a good deal of the results of massive studies done on aircraft design and safety is applicable to automobile design. Auto Companies largely ignore this great wealth of material and *refuse to make recommended modifications that would reduce the toll of death and injury*. Sales and styling, not safety, has priority, and the general attitude is that of the Detroit Vice-President who said: "Ten dollars of chrome will sell more new cars than one hundred dollars of safety features." Criticism of the auto companies has been increasing in recent months as more and more people become aware of what *could be* and *is not* being done to protect the public. To counter this, the auto manufacturers have launched a massive public relations campaign. Safety features that have been *forced* on them by the U.S. Government's General Services Administration which purchases 50,000 vehicles each year, are now being widely touted, perhaps in an attempt to forestall the bills dealing with auto safety now pending in thirty U.S. State Legislatures. Experience shows the *auto companies make safety changes only when forced to*. We have yet to be offered disc brakes and harness type seat belts as standard equipment, and it has been possible for years to make a steering assembly that would not, in a crash, impale the driver. People are still being killed by spare tires and tool boxes that crash through cardboard trunk walls to break backs and crush bodies. It is said that 87 per cent of traffic accidents and 45 per cent of highway fatalities occur at speeds less than 40 miles per hour.

In view of all the above, we urge the Federal Government to:

(1) *Establish a RESEARCH AND DEVELOPMENT UNIT that would seek to develop a prototype safety car that would offer passengers the maximum protection against injury in the event of accident, and have the highest possible standards of braking, stability and such features as would mitigate against the occurrence of accidents. This prototype safety car would not be merely a modification of existing car design, nor based on a priori commonsense judgment, but upon solid research and scientific analysis.*

(2) *We further urge that A COMMITTEE made up in substantial part of scientists, engineers and doctors be established to keep abreast of research and advances affecting automobile safety. This committee would from time to time make recommendations to the government that within a certain specified reasonable time all cars manufactured in or imported into Canada have such specified devices or systems—or their equivalent as would make cars safer. Jurisdiction should extend over all components including tires. These specifications would be minimum performance specifications only and not mechanical specifications as mechanical specifications tend to limit advances. At the present time, the Federal Government does not exercise any control having to do with safety over automobiles. Control over ownership and operation of automobiles is exercised by the provinces. But there is no reason why the Federal Government could not exercise control through setting specifications for manufacture and importation. There are already agencies of government protecting Canadians through control over, among other things, food and drugs, housing, shipping, railroads and aircraft manufacture and usage. There is every reason for the same sort of control to be exercised over automobiles travelling throughout Canada.*

(3) *We further urge that the Federal Government take steps to establish a NATIONAL ACCIDENT PREVENTION RESEARCH CENTRE, staffed with scientists from a wide spectrum of disciplines—physicians, psychologists, engineers, toxicologist, psychiatrists, etc.—who would carry on extensive research as to all types of accidents, establish a central information centre, promote and co-ordinate research in other places, and make recommendations to industry, the public and governments at all levels. Traffic accidents would be only one of many major areas of concern for this NATIONAL ACCIDENT PREVENTION RESEARCH CENTRE.*

We believe that Canadians should be assured that when they buy something as expensive, important and potentially dangerous as an automobile, that they are getting the greatest measure of protection that science and technology can offer.

The traditional approach to this serious problem is obviously inadequate and it is necessary to move in new and entirely different directions. Tradition and slow evolution has no value when we pay for them daily in pain and death.

**OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE**

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

THURSDAY, MAY 12, 1966

Respecting the subject-matter of

Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).

Bill C-87, An Act to amend the Criminal Code (Impaired Driving).

Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and

Private Members' Notices of Motions Numbers 26 and 31.

WITNESSES:

Mr. Ian Wahn, M.P. and Mr. Heward Grafftey, M.P.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Otto,
Mr. Asselin (<i>Charlevoix</i>),	Mr. Laflamme,	Mr. Ryan,
Mr. Bell (<i>Carleton</i>),	Mr. Latulippe,	Mr. Scott (<i>Danforth</i>),
Mr. Choquette,	Mr. MacEwan,	Mr. Stanbury,
Mr. Chrétien,	Mr. Mather,	Mr. Trudeau,
Mr. Fulton,	Mr. McQuaid,	Mr. Wahn,
Mr. Goyer,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Guay,		

(Quorum 10)

R. V. Virr,
Clerk of the Committee.

ORDER OF REFERENCE

WEDNESDAY, May 11, 1966.

Ordered,—That the name of Mr. Guay be substituted for that of Mr. Cantin on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

THURSDAY, May 12, 1966.

(6)

The Standing Committee on Justice and Legal Affairs met this day at 11.15 o'clock a.m. The Chairman, Mr. A. J. P. Cameron (*High Park*) presided.

Members present: Messrs. Aiken, Asselin (*Charlevoix*), Bell (*Carleton*), Cameron (*High Park*), Choquette, Chrétien, Forest, Honey, Laflamme, Latulippe, McQuaid, Trudeau, Wahn—13.

In attendance: Mr. Grafftey, M.P. and Mr. Rheal Casavant, Television executive.

The Chairman informed the Committee that Mr. McQuaid had replaced Mr. Woolliams on the Subcommittee on Agenda and Procedure.

The Chairman further informed the meeting that Dr. Wallace Troup would appear before the Committee on May 19 and Professor Ward Smith and Mr. E. H. S. Piper, representatives of the Canadian Highway Safety Council would appear on June 7, 1966.

The Chairman then invited the members to continue questioning Mr. Ian Wahn, sponsor of Bill C-49—An Act to amend the Criminal Code (Dangerous Motor Vehicles).

Following this, the Chairman invited Mr. Grafftey, M.P. to present a film on Motor Vehicle Safety. After brief introductory remarks and after presenting his colleague, Mr. Rheal Casavant, a film produced by the National Film Board entitled "Every Second Car" was shown to the Committee.

There being no further questions the meeting adjourned to the call of the Chair.

R. V. Virr,
Clerk of the Committee.

EVIDENCE

THURSDAY, May 12, 1966.

● (11.14 a.m.)

The CHAIRMAN: Gentlemen, we have a quorum. We will get right down to business. I have a letter from Mr. McQuaid indicating that he will serve as a member of the steering committee during Mr. Woolliams temporary absence. I also have a letter from Mr. Farmer, executive director of the Canadian Highway Safety Council, in which he advises that Mr. Reid Scott has told him that this Committee is studying the problem of highway safety and expresses the hope that the council will have an opportunity of discussing that subject matter with the Committee. In that connection, we have Dr. Troup as our witness on May 19. The Clerk of the Committee has been in touch with Professor Ward Smith of Queen's Park and Mr. Piper, who is the counsel for the Canadian Highway Safety Council, and they will be available as witnesses on June 7.

Our next meeting will be Thursday of next week and, in the meantime, I will try to arrange if possible, to have a meeting with the Minister of Industry for probably Wednesday or Friday of next week. Mr. Ian Wahn is here. We were discussing his bill two meetings ago. We did not have an opportunity to question him and that opportunity is now available. If you have any questions on Mr. Wahn's bill he is here prepared to answer them. Mr. Wahn's bill No. C-49, an Act to amend the Criminal Code (Dangerous Motor Vehicles) provides for a penalty for "any person who manufactures or assembles and sells or otherwise disposes of any motor vehicle intended for use on a highway which is not built and equipped with safety devices so as to make it reasonably safe for use on the highway." I think that is the real essence of the bill, is it not, Mr. Wahn?

Mr. Ian WAHN (*Sponsor of Bill C-49*): Plus the personal liability on the directors and officers.

Mr. FOREST: Mr. Wahn, by not supplying the safety devices to be incorporated in motor vehicles and having in mind the relevant circumstances you mentioned, such as the technical ability of the motor vehicle industry to build and equip safe motor vehicles and with the potential speeders, do you not think the amendment to the Code is quite general and in practice it would be very difficult to get a conviction under it?

Mr. WAHN: I would agree that the language is very general. I think it would be quite possible to get a conviction, though. The purpose is to retain flexibility and not attempt to specify today just how a motor vehicle should be built because with the development of the industry and with the change in road conditions, no doubt there will be improvements made from year to year. So I

thought it best to leave the language general. The court would decide whether or not a motor vehicle or a particular car is reasonably safe for use on the highway. Courts are accustomed to making decisions of this sort.

Just as an example, in the Criminal Code now there is a provision which makes it a criminal offence to send an unseaworthy ship to sea and there is no attempt made in that particular section of the Criminal Code to define specifically when a ship is unseaworthy. Similarly, I think it should be a criminal offence for a manufacturer to send an unsafe motor car out on our highways. I think the court would be able to determine whether in fact a car was unsafe, on the basis of expert evidence that would be presented to the court.

The CHAIRMAN: Did you check to find out if there were any charges laid under the Code having to do with unseaworthy vessels?

Mr. WAHN: I did not check and I did not bring my copy of the Criminal Code with me, Mr. Chairman. My recollection is that there were some annotations under that particular section, but I could not be absolutely certain.

Mr. BELL (*Carleton*): I would like to comment, Mr. Wahn, on the respective approaches of your own bill and that of Mr. Southam. He took the approach of actually defining safety devices; whereas you have left it presumably to broaden down from precedent to precedent. Why do you think your approach is preferable to that of Mr. Southam and what weaknesses may there be in Mr. Southam's bill in regard to his approach?

Mr. WAHN: I would think that if you attempt to specify today what safety features a car should have, it would be probably necessary to keep amending the legislation from year to year. Presumably, cars should be made safer each year, and when all the devices which Mr. Southam has listed in his amendment have been adopted, then presumably there will be improvements which should be added and it would be necessary then to keep amending the Criminal Code from year to year. If you go general, then I think the section would not require amendments so frequently.

Mr. BELL (*Carleton*): I gather that you would wish now to have your bill amended to include the importation of cars.

Mr. WAHN: Yes, that was an oversight on my part. It should clearly be extended to cover one who imports and sells.

Mr. BELL (*Carleton*): What about exports?

Mr. WAHN: I had not given any thought to the question of one who exports. I suppose if you cover one who manufactures and sells—I think that probably the wording of the bill as it now is, is wide enough to cover one who exports because it covers those who manufacture and sell. It is not restricted to those who sell within the country. So, presumably, it would cover one who manufactures and exports.

Mr. McQUAID: It would seem Mr. Wahn that this particular bill is not wide enough to cover the case of a man who sells a second hand motor vehicle. Is that right?

Mr. WAHN: That is right. That seemed to me to be a different type of problem. Perhaps something should be done about that but, the difficulty that I

saw was that it would be very very difficult to impose this type of criminal liability on an ordinary distributor of motor vehicles because he would not have the facilities to determine whether a particular car is safe. His job is to sell cars which are produced by the manufacturer. It seems to me that the responsibility should be on the manufacturer. The second hand dealer is another matter. I do not know just what you can do about that problem.

Mr. McQUAID: Do you not think that is an important problem. Second hand cars on the road should be equipped with safety devices, too. A very simple change in the wording of your bill, I think, would cover it.

Mr. WAHN: What change would you suggest?

Mr. McQUAID: That any person who manufactures or assembles and sells, or sells or otherwise disposes of any motor vehicle.

Mr. WAHN: That would mean that a distributor of new vehicles would also have this same criminal responsibility. I wonder if that is practicable? If you could impose the liability on the manufacturer, I think it would cover automatically all the distributors of new vehicles. I realize it is a rather different problem in knowing how to deal with those who sell second hand vehicles which may be in bad condition. Perhaps the bill could be extended specifically to cover the distributors of second hand motor vehicles.

Mr. AIKEN: Mr. Wahn, I would like to follow up Mr. McQuaid's question because I think it is very important. Perhaps, as you say, the distribution and sale of second hand vehicles is a different problem, but it is aimed toward the same difficulty. Perhaps another section in your bill, or splitting it into two sections, would be useful, because it would then impose some liability on dealers who sell vehicles that are in that condition. There are a lot of them and mostly they are people who are well qualified in the condition of motor vehicles. And, if it were never checked for brakes or things like that—this is quite a slightly different problem, granted, but I think it is all part of road safety.

Mr. WAHN: I would be inclined to think it should be a separate subsection because I think it is somewhat different. I believe you are talking about second hand motor vehicles. You are thinking probably of motor vehicles which are defective in the parts. We are not thinking so much of the original design of the vehicle as to a vehicle which may be defective in its parts. I think that is a different type of problem which could be dealt with in a separate subsection.

Mr. AIKEN: Then it would be still part of the same problem, that is unsafe vehicles on the highway.

Mr. WAHN: Yes, and I can see some merit in imposing a liability on second hand car dealers to make sure that the parts of the car as it exists when it comes into his hands are at least put into good condition. I do not see how you could hold the second hand dealer responsible if the car which he bought from someone else—as originally designed—was unsafe. That is why I say it is a rather different problem.

Mr. McQUAID: There seems to be another weakness in this bill, Mr. Wahn. You are putting the liability of course on the manufacturer to equip these cars with safety devices, but you are not making any requirement for the owner,

after he acquires the vehicle, to continue to keep it equipped. For example, if one of the safety devices breaks down should there not be some requirement that it has to be replaced on the vehicle?

Mr. WAHN: I had not considered that particular point, but now that you have raised it, it appears to me that—the owner is liable, of course, if he drives an unsafe vehicle and hurts someone or causes property damage. Your suggestion would mean that we impose additional criminal liability on him perhaps to force him to protect himself as well as others. Primarily this bill is directed toward those who manufacture motor cars or assemble them. As I say, it should also be extended to those who import them. I was not thinking in terms of imposing criminal liability upon the owner of an unsafe motor vehicle. That would be going much further.

The CHAIRMAN: Did you examine the provincial laws with regard to the safety of automobiles? I am not referring to safety devices, but just that they are in good road condition without regard to whether they have safety devices, good brakes, good lights and things of that kind?

Mr. WAHN: I have not examined the provincial legislation specifically, Mr. Chairman. I assume, however, that civil liability is imposed upon anyone who—

The CHAIRMAN: This is really criminal liability.

Mr. WAHN: Yes.

Mr. HONEY: Mr. Wahn, following the Chairman's suggestion—this may be in the nature of a supplementary—and with reference to the suggestion of Mr. McQuaid, of imposing liability on the seller of second hand cars, we must keep in mind the danger or probability of running into a constitutional problem, with this bill, because it would seem to me you would be extending the application of this bill which may be all right constitutionally now because you are confining it to manufacturers, or assemblers and sellers of original motor vehicles. But if you attempt to impose a liability on the seller of second hand motor vehicles who has, in effect, no responsibility for manufacture or for putting safety devices on vehicles you may be in conflict with provincial laws. I wonder if that is what the Chairman had in mind. It may have the effect of spoiling your bill?

● (11.30 a.m.)

The CHAIRMAN: Well what I had in the back of my mind is that they could be supplementary. Provincial law provides for the roadability of the car, as a car *per se* and not particularly the safety devices. A car is not allowed on the road unless it is in good condition. I know in a number of American states they have laws which state that every four or six months you have to take your car to a service station and have it checked over to see if it is in good running condition, and these are old cars in many cases. I would take it also that any bill proposing criminal liability on a manufacturer or assembler and so on would be effective only from the date it became law. If a car was manufactured before that, I do not think you would have a good defence.

Mr. FOREST: Mr. Chairman, would it be a good idea if we had the subcommittee deal with all the private bills that have been presented regarding the safety of motor vehicles and try to redraft a bill with the co-operation of all the sponsors, which could include—

The CHAIRMAN: Well, I do not know whether it would be within the terms of reference to consider that problem. I think when the Committee sits down to draft a report and when a similar principle is involved we will consider them in toto and make our recommendation on the general consensus of opinion. I think Mr. Choquette has some questions he would like to ask you, Mr. Wahn.

Mr. WAHN: Would you prefer that I come up there, Mr. Chairman?

The CHAIRMAN: Yes, that probably would be better.

Mr. CHOQUETTE: We are discussing all the subjects and they are all related. I do not know if you could redraft them.

The CHAIRMAN: Well, as I say, that is something we would have to consider. Specific bills and specific motions are referred to us. We are asked to study the subject matter. Now, if we draft a new bill or suggest amendments to them, we may be going beyond our terms of reference. We consider the subject matter of a bill, then if we have any suggestions, we could think about these things, A. B. or C. or whatever they are which might be considered as improvements.

(Translation)

Mr. CHOQUETTE: Mr. Wahn, I know that this is an improvement in relation to the bill which we studied last week because it is specified in the draft of your bill that this applies to motor vehicles intended for use on the highway. Two weeks ago, I had raised an objection in connection with the bill that we were studying. There mention was made only of the manufacturers. There was no specification with regard to the aim for which this motor vehicle was manufactured. That was too broad.

However, Mr. Wahn, I must ask the following question now as I re-read your bill. I wonder what can this really add to the Criminal Code. I do not think it adds anything at the present stage of our legislation because if someone were actually to manufacture or sell a car which was not reasonably safe, then I wonder whether we could have recourse to those sections which deal with criminal negligence because we would be putting other peoples lives in jeopardy if those vehicles were not sufficiently or reasonably safe. So here I would rather tend to agree with Mr. Forest and the others, that is to say that if we do not describe the safety devices required then the scope of the bill is so broad that action could be taken under sections 191 and others which deal with criminal negligence. Whenever a car is manufactured—I mean a car which is intended for use on public highways—when such a car is sold to someone and is not reasonably safe, then we are truly affecting other people's lives and there your bill does not add anything because the Criminal Code already deals with this question of other people's lives. Only the person who manufactures a car which is not reasonably safe could be said to endanger other people's lives and be proceeded against under section 191 and subsequent sections. What would your answer be to this?

(English)

Mr. WAHN: I would hope that this bill would add something to the existing provisions of the Criminal Code. It is true there are sections which make criminal negligence a crime but this new provision is much more specific and I

think would make it entirely clear to a court that criminal liability is being imposed upon a manufacturer where he manufactures a car which is not reasonably safe, having in mind the specific circumstances which are referred to in the bill.

For example, the motor vehicle must be built and equipped with devices—not just equipped with safety devices but designed and equipped with safety devices so as to be reasonably safe having regard to the relevant circumstances including the potential speed. In other words, this type of thing I think, would make it entirely clear to a court that a new crime is being created, namely, a crime which is committed when a manufacturer produces a vehicle which having regard to these circumstances, is not safe for use on the highway. As I mentioned earlier, there is now a provision in the Criminal Code which makes it a crime to send to sea an unseaworthy ship. That is a general term, too and it seems to me that if it is practical to impose criminal liability where someone sends an unseaworthy ship to sea, it should equally be feasible to make it a crime for someone to manufacture an unroadworthy car.

(Translation)

Mr. CHOQUETTE: We could have special provisions for aircraft, trains, etc, I understand the shade of meaning that you are introducing but would you not think that it would be useful to describe a standard vehicle? The court will have to refer to some standard vehicle, they will have to have some kind of fully specified criteria in order to enable them to pass sentence and convict people.

(English)

Mr. WAHN: I would expect a court would ask the assistance of an expert and would be guided to some extent by expert advice as to whether a particular car was designed in a safe way. The objection that I have to any attempt to specify safety devices is simply that as other safety devices are adopted your section becomes obsolete. For example, seat belts will soon be standard in all cars.

(Translation)

Mr. CHOQUETTE: My last question. The only thing is that I am afraid that if this were adopted the present state of affairs will in no way be modified. I for instance have a Ford, a 1966 model, I am sorry, it is a 1965 model, and in the mind of Mr. Grafftey this car would not have the ideal safety devices that Mr. Grafftey would like to introduce. Well what shall I do? Shall I sue my salesman? I am sure he will be able to justify the sale of that car to me, he could say that it is perfectly safe. In other words, I think that your bill is so general in scope that it does not add anything to the present state of affairs. That is my comment. If we do not introduce in the Criminal Code a standard model, a specifically described model of a vehicle which is supposed to be fully safe we will not be adding anything. Thank you.

(English)

Mr. WAHN: I would not suggest that the wording of the bill as I have drafted it is ideal. I wanted to avoid a specific list of safety devices for the reasons I have given. By making reference to all relevant circumstances,

including potential speed, conditions under which it is likely to be used and the technical ability of the motor vehicle industry to design safe motor vehicles, I tried to give some indication to the court in rather general terms, as to the type of thing they should consider when a crime is alleged. Now, if there is other general language which would be more appropriate, I certainly would be delighted to be informed of it and perhaps the wording could be improved. I do think the wording is adequate to create a new offense.

The CHAIRMAN: are there any more questions?

(Translation)

Mr. LATULIPPE: Mr. Chairman, I think there should be a clear difference in the bill between new and used cars, since, on old cars you cannot expect to have the same safety devices as you have on new cars. I agree with those, such as Mr. Graftey for instance, who have done a great deal of homework on this, that in new cars we must introduce changes that safety devices must be introduced to make cars as safe as possible, and give more safety to consumers. After all vehicles are built to provide transportation for us and they perform very well but they are not built to withstand accidents. In particular imported cars are just like accordions. Some do not even have a chassis, and they fold up like accordions to crush the people inside.

So certainly measures must be taken, something must be done and manufacturers must improve their cars, whether they are imported or manufactured in Canada. Certainly improvements can be made with regard to safety. I cannot find any great fault with cars from the point of view of performance or braking power or anything else, but safety devices should be introduced. All I can say is that from the accident aspect certain improvements must be introduced and it might be possible to require, under the law, that such cars be built in order to absorb shocks in case of accident. In particular, with regard to imported cars, there are no safety devices whatsoever.

(English)

Mr. WAHN: I agree this bill of mine should be extended to cover imported cars. That is a defect of the bill at the present time.

The CHAIRMAN: Mr. Forest, did you have a question?

(Translation)

Mr. CHOQUETTE: If we were to take your bill as it is, Mr. Wahn, the person who drives a Volkswagen certainly is not as safe on the highway as the one who drives a Cadillac. Well is the Volkswagen manufacturer liable to conviction under this section? I think it would be very difficult. . . It is obvious, of course, that any time a Volkswagen has a collision, somebody's life is endangered.

(English)

The CHAIRMAN: We are going to have a very interesting time when we come to write our report, because there is going to be a difference of opinion as to the merit of the subject matter of the bills. When we do get down to that stage, then we can consider just what to report back to the House for their consideration. Are there any other questions of Mr. Wahn?

I forgot to mention—it was brought up at our previous meeting by Mr. Grafftey himself—that Senator Magnuson, who was the chairman of the Senate commerce committee, might be considered as a suitable person to appear before this Committee. You will realize that if we wanted Senator Magnuson to appear, we would have to do it through the Department of External Affairs. We cannot ask a statesman from one country to come and give evidence in another country unless he gets clearance from his own country. Mr. Martin has indicated to me that if the Committee felt that it wanted him, and could see an advantage in calling Mr. Magnuson, he would be glad to take the necessary diplomatic steps to see that our invitation was properly extended. You might let me have your opinion on that.

● (11.15 a.m.)

Mr. BELL (*Carleton*): My understanding of the suggestion is that there should be liaison between yourself, sir, and Senator Magnuson as to the adequacy of the procedures and the suggestions that he might have, not that he might come as an expert witness. I wonder if, in fact, Senator Magnuson, for whom I have high regard, would be sufficiently expert in the circumstances. He is sitting, as you are, listening and I would have thought it would be better to hear from witnesses we had here than some person who sits in a semi-judicial capacity.

The CHAIRMAN: Have you any comments to make on that, Mr. Grafftey?

Mr. GRAFFTEY: I might comment very briefly when I am called upon to present my brief.

The CHAIRMAN: We will, then, leave it at that for the time being.

Mr. AIKEN: Mr. Chairman, just before we go on, Mr. Choquette raised a question and I think it was an important one—I do not know whether Mr. Wahn intended to answer. I rather believe he did—and that was the question of the relative safety of vehicles and whether or not he has any intention, in his bill, of saying, “a Volkswagen is not as safe as a Cadillac”. I think this would be a very bad approach. I think the purpose of his bill is to make every vehicle reasonably safe and to provide that there will be no inherent dangers in it. I think once they put it on the road, the duty has ceased. I wonder if Mr. Wahn would like to answer that question. I think it was a good one.

Mr. WAHN: It was a good question. As I understood it, Mr. Choquette referred, not to cars which are now on the highway, but to cars which would be manufactured after this bill came into force. The question was whether the manufacturer of a Volkswagen would have to take care to make it just as safe as the manufacturer of a Cadillac would. I think the answer to that is it is recognized that there is merit in having cars of different sizes. If this bill came into effect, all that could be expected would be that a small car was reasonably safe, bearing in mind the fact that it was a small car and, therefore, perhaps inherently not as safe as a much larger car. The bill does specify that the vehicle must be safe, having regard to the relevant circumstances. I would think the size of a car is one of the relevant circumstances. I do not know whether, in fact, a Volkswagen is any more dangerous than a Cadillac or whether size gives

safety or not but I think we must recognize that we will always have cars and motorcycles of different sizes on the road and unless you want to prohibit altogether cars of a certain size, all we can do is require that they be as reasonably safe as their size would permit.

(Translation)

Mr. LAFLAMME: I only have a single question to ask of Mr. Wahn. The general idea I find is a very good one but I would really like to know how we can describe a crime or an offence without going into the details as to what actually is an automobile which is built in a reasonably safe way. We have no description of what is, what is a reasonably safe car. How then can we establish a new offence? What is a reasonably safe car?

(English)

Mr. WAHN: I think that expert evidence would be of great assistance to a court. For example, most of the articles which are now being written about the safety of the prototype cars, are being produced to illustrate safety features. These indicate, for example, that it is quite obvious that a collapsible steering wheel is desirable because many injuries are caused by the rigid type of steering wheel we have now. The rounded exterior surfaces are probably desirable also, well padded interiors, reset instrument panels, reset door handles and better locking devices on the doors. Experts can be of great assistance to a court.

Mr. CHOQUETTE: Then you agree that your bill has to define safety devices?

Mr. WAHN: No, I take the position that it is undesirable to attempt to list safety devices as they will change from year to year. I believe that a court is quite accustomed to applying the test of what is reasonable, under the circumstances. The court is called upon to do this every day in criminal cases, as well as in civil cases, and I find nothing unusual at all in it, particularly when the court will be assisted by expert evidence.

Mr. CHOQUETTE: But you know how experts are? They will bring other experts to say that the other experts are wrong and—

Mr. WAHN: That is true. Then the court makes its decision. I think it is quite customary for both sides to have experts giving evidence in direct conflict. The court somehow makes a decision because it is forced to make a decision.

(Translation)

Mr. CHOQUETTE: In other words, you rely a great deal on jurisprudence to clarify your bill?

Mr. TRUDEAU: What about a car which is a "provident head of the family", as we would say in the Civil Code. That is the idea I have of a car like that.

Mr. CHOQUETTE: Because you see, Mr. Wahn, if someone drives a Volkswagen on a highway, it could be said that safety belts are necessary. But I feel personally that a seven passenger limousine is just as safe without safety belts as a Volkswagen carrying two or three seat belts. We have here no specific

description or any standard established of what are security or safety features. This being the case, then I think that we are really not dealing with anything concrete.

(English)

The CHAIRMAN: Gentlemen, tempus fugit. If there are no more questions which are urgent, we will thank Mr. Wahn very much for his presentation of his brief and for his bill and for the very full and complete answers he has given to the various questions. Thank you very much, Mr. Wahn.

We will have the film and I am going to ask Mr. Grafftey to make a few opening remarks.

I am informed that the commentaries are in both French and English. I think probably that those who will be following the French commentaries, with greater ease, are in the majority. Therefore, if it meets with approval, we will have the commentaries in French. Those who would like to have them in English will have to stay and hear it a second time. I do not think they will.

(Translation)

Mr. GRAFFTEY: Before we show our film, I would like to make a preliminary comment. I would like to point out that we have with us, Mr. Rhéal Casavant of the CBC, and I would publicly like to thank him for the considerable research he has been carrying on over the past two years on the subject before us. I would like to take this opportunity Rhéal, to thank you publicly before this committee today for the major efforts you have made over the years with regards to public safety.

● (12.00 noon)

Now dear colleagues we will present our film "every second car" which discusses the germ of the epidemic which we discussed several days ago and which is still before us.

The commentary we will hear is in English to begin with.

Mr. CASAVANT: The film is in English, but we also have a French film.

Mr. GRAFFTEY: These are bilingual accidents.

(English)

I would just like to say very briefly that I have with me today Mr. Rhéal Casavant from Radio Canada who helped me—and helped many people who are interested in this field—to prepare the text that we presented to the Prime Minister a year ago.

I would like to say very briefly, with all due respect, that what we have found out in our first Committee here, is that expert witnesses are going to be terribly important. What I say to the Committee today, before we see the film, is simply this. There is a body of very expert opinion on the whole subject distributed across Canada. Rhéal, to my right here, has worked indefatigably for

two years. He has a list of approximately 30 or 40 witnesses who he feels should be called in that order. Not that this Committee is going to be able to do that, maybe you are going to set up another Committee. I can only tell you, gentlemen, that the United States Congress had the same experience and their subcommittee in the Senate met for a year on the subject—this one subject. The subcommittee in the House of Representatives is going to meet for approximately two years. It would be my hope that this Committee on Legal and Justice Affairs, even under the Canadian system, could meet for an indeterminate period of time to hear about this most important subject. If not, I do hope the procedure will be developed whereby the witnesses can be called before this Committee or another committee that is set up. I cannot over-emphasize the importance of having expert witnesses on the legal aspect, the engineering aspect and the ethical aspect of this subject.

Before showing the film, I think it is very interesting and very important that I do bring this to your attention, at this time, especially in view of the fact that Mr. Wahn has just testified so well. Mr. Wahn's bill and the questioning pointed out this morning that we really do not have a body of information to draw on. Mr. Wahn purposely drafted his bill the way he did because we can make no beginning point in terms of definite public standards to the building of automobiles. Gentlemen, again and again I draw your attention to the synopsis of our brief where we mark out one, two, and three. We urge the federal government to establish a research and development unit that would seek to develop a prototype safety car. Mr. Wahn, in due respect sir, you spoke about safety cars that are being built. None are being built. The motor car industry has stopped the building of any. We have no valid point of beginning from which to base contingents for co-drafters or anything else. We just do not have it. We do in aircraft design; we do in ship design; we do with railroads, but there is no prototype safety car being built today. So that is why I say, number one, we should urge the government to get on with the building of such a prototype safety car by public authority. It is spelled out in our recommendation.

Then we urge that a committee, made up in substantial part, of scientists, doctors and engineers, be established to keep abreast of research and advances affecting automobile safety. All these standards would be decreed by public authority on which a bill, like Mr. Wahn's, would be very useful eventually. Then we go on to urge in number three, that a national accident prevention and research centre be established. We know nothing about why people get into car accidents and when they do why they get killed or injured. So the usefulness of such legislation or resolutions that we are discussing today will only be proven when we take these preliminary steps. That is why, before we show the film, I draw your attention to the recommendations in the brief.

I cannot over-emphasize the second step, and I am afraid I am repeating myself especially on this subject, which is the calling of expert witnesses in a logical organized way, either before this Committee or before a subcommittee you set up. I would recommend that Mr. Casavant work hand in hand with the Chairman and the permanent committee members in order to do movies of this sort.

Note: At this point a half hour film was shown with commentaries.

The CHAIRMAN: Before we adjourn, I think we would like to thank Mr. Rhéal Casavant for coming and presenting this film. It has been a real education to me and I know by the attention the members have given, that it has been a real education to them too. Thank you very much, Mr. Casavant and thank you, Mr. Grafftey, for making this possible.

The meeting is adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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and/or a translation into English of the French.

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

THURSDAY, MAY 19, 1966

Respecting the subject-matter of

Bill C-26, An Act to amend the Criminal Code (Safety Devices for
Automotive Vehicles)

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor
Vehicles)

Bill C-87, An Act to amend the Criminal Code (Impaired Driving)

Bill C-118, An Act to amend the Criminal Code (Negligence in opera-
tion of motor vehicles), and

Private Members' Notices of Motions Numbers 26 and 31.

WITNESS:

Dr. Wallace B. Troup (retired).

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Guay,	Mr. Nielsen,
Mr. Asselin (<i>Charlevoix</i>),	Mr. Honey,	Mr. Otto,
Mr. Bell, (<i>Carleton</i>),	Mr. Laflamme,	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Scott (<i>Danforth</i>),
Mr. Chrétien,	Mr. MacEwan,	*Mr. Tolmie,
Mr. Fulton,	Mr. Mather,	Mr. Trudeau,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
		Mr. Woolliams—(24).

(Quorum 10)

R. V. Virr,

Clerk of the Committee.

*Mr. Tolmie replaced Mr. Stanbury on May 16.

ORDER OF REFERENCE

MONDAY, May 16, 1966.

Ordered,—That the name of Mr. Tolmie be substituted for that of Mr. Stanbury on the Standing Committee on Justice and Legal Affairs.

Attest

LÉON-J. RAYMOND,
The Clerk of the House.

REPORT TO THE HOUSE

THURSDAY, May 19, 1966.

The Standing Committee on Justice and Legal Affairs has the honour to present its

SECOND REPORT

Your Committee recommends that it be permitted to sit while the House is sitting to meet the convenience of out-of-town witnesses when they appear.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

(Concurred in May 25, 1966)

MINUTES OF PROCEEDINGS

THURSDAY, May 19, 1966.

(7)

The Standing Committee on Justice and Legal Affairs met at 9.45 o'clock a.m. this day. The Chairman, Mr. A. J. P. Cameron, presided.

Members present: Messrs. Aiken, Bell (*Carleton*), Cameron (*High Park*), Choquette, Forest, Goyer, Honey, Laflamme, Mather, McQuaid, Otto, Ryan, Tolmie (13).

In attendance: Mr. Howard Grafftey, M.P.

Also in attendance: Dr. Wallace B. Troup, retired.

The Chairman informed the Committee that the Minister of Industry, Mr. Drury, would attend the next meeting of the Committee to explain his department's activity in developing an Automotive Vehicle Safety Code.

The Chairman introduced Dr. Wallace Troup, retired. He explained that Dr. Troup had been active in the field of highway safety over the past twenty years and that he could be considered as an experienced witness in the field of Breathalyzer Tests.

Dr. Troup reviewed his background in the field and then covered the reliability and accuracy of Breathalyzer Tests, whether they should be mandatory or not and, if so, what arbitrary blood alcohol levels should be set.

The Chairman mentioned that out-of-town witnesses would be called before the Committee and that the Committee should consider a request to sit while the House is sitting.

Moved by Mr. Forest, seconded by Mr. Honey,

Resolved,—That the Committee recommend that it be permitted to sit while the House is sitting to meet the convenience of out-of-town witnesses.

And the questioning of the witness continuing.

On behalf of the Committee the Chairman thanked the witness for his interesting presentation.

At 11.17 o'clock a.m. the Committee adjourned to the call of the chair.

R. V. Virr,
Clerk of the Committee.

EVIDENCE

(Recorded by electronic apparatus)

THURSDAY, May 19, 1966.

The CHAIRMAN: Gentlemen, I see a quorum. We will now commence the meeting.

I have received from the Co-ordinator of Committees a note which reads, in part, as follows:

The Chairman should announce each speaker's name clearly so that it can be recorded. In some cases statements are being wrongly attributed because the voice of the speaker cannot be identified. Members should be cautioned to speak towards the microphone on the table. In some cases statements are being lost because speakers turn from the microphones or lean back in their chairs.

I have been in touch with the Minister of Industry, and he can come to a meeting tomorrow morning at 9.30.

I would like to have an expression of opinion from those who are here on whether they can attend such a meeting, or whether they, in the absence of any notice of it, have made other arrangements? Mr. Aiken has told me that he would probably not be able to be here.

Mr. AIKEN: Well, actually the Penitentiaries Committee is going down to Cowansville tomorrow with Mr. Pennell.

The CHAIRMAN: What about you, Mr. McQuaid? You cannot be here either?

Mr. MCQUAID: I cannot be here.

The CHAIRMAN: How about you, Mr. Bell?

Mr. BELL (*Carleton*): I will be away tomorrow.

An hon. MEMBER: There are a couple of committee meetings tomorrow, Mr. Chairman. That is my only concern.

The CHAIRMAN: Well, I will check. I am not going to ask the Minister to be here if I am not certain that I can get a quorum.

Now, it is my pleasure to introduce to the meeting Dr. Wallace Troup formerly of the Canadian Medical Association. He is an expert on the subject matter of impaired driving, with particular reference, I believe, to the validity of the breathalyzer test. Dr. Troup will tell you his qualifications on the subject that he is going to discuss with you, and I believe he has prepared a memorandum which he intends to read.

We also have another distinguished guest in the audience, Air Vice Marshal Kerr, who is executive director of the Traffic Injury Research Foundation. We welcome him to our meeting and we hope that he will derive benefit from it.

Dr. WALLACE TROUP: Mr. Chairman and gentlemen, I am very happy to appear before you today in the capacities of a private citizen and a doctor, but I

do not claim to be an expert. I am not speaking for the Canadian Medical Association, as I relinquished the position of chairman of its Committee on Traffic Accidents a year ago. However, I have cleared my presence here today with the Canadian Medical Association and they said: "Go ahead; it will be quite satisfactory to us if you appear."

I have been interested in the problem of highway safety since around 1950, and since that date I have served for varying terms as Secretary of the Ontario Medical Association's Committee on Highway Safety, Chairman of the Medical Advisory Committee of the Canadian Highway Safety Council and Chairman of the Canadian Medical Association's Committee on the Medical Aspects of Traffic Accidents. I am also a charter member of the recently-formed Traffic Injury Research Foundation on the staff of which is Air Vice Marshal Kerr.

It is on the basis of this broad experience that I appear before you today. While I am not an expert, the committees on which I have served know who are qualified experts on the medical aspects of this problem, and these have been consulted freely.

Those who have worked so long and so hard in this important public health field will be highly gratified that Bill No. C-87 is now being studied.

In 1955, the Canadian Medical Association became deeply concerned in this serious public health problem and appointed a standing committee on the medical aspects of traffic accidents. This committee's terms of reference were to do what it could to prevent traffic accidents, as the medical profession has a responsibility for prevention as well as treatment.

After studying the report of your meeting of April 26, it seemed to me that I might deal with three broad questions this morning. They are as follows:

1. Are there reliable, practical and reasonably accurate bio-chemical tests for the determination of alcohol in the blood.
2. If there are such tests, should they be made mandatory.
3. What arbitrary blood-alcohol levels should be set.

At this point, however, I feel that the size and the growing seriousness of the traffic accident problem in Canada should be more clearly placed on your records, and I would like to add just a few facts to those already given at your last meeting by Mr. Mather:

1. In Canada, accidents from all causes are the third leading cause of death, heart diseases being first and cancer second.
2. Accidents are the leading cause of loss of life years, or premature mortality. It is the leading cause of loss of life years with a percentage of 18.4. Heart diseases come second in this category, 14.7 per cent; and cancer third with 12 per cent.
3. Each year shows an increase over the previous year in traffic deaths, injuries and total traffic accidents in Canada.
4. In 1964, the traffic death rate per 100,000 population in Canada reached an all-time high of 25.3. This unhappy trend is also shown if you use other yardsticks such as deaths per 100,000 registered cars and deaths per hundred million vehicle miles.

So much for our purely Canadian experience, but there is one more figure I must place before you, and that is Canada's standing in relation to other

countries. In a list of twenty-five countries reporting traffic deaths per 100,000 population—reporting to the World Health Organization—and I omit South Africa because it deals with only a part of its population—Canada now occupies the last position—the bottom position—and I call this a national disgrace. I have made this statement when Canada was fourth from the bottom, third from the bottom, second from the bottom and I now say it when Canada has hit the bottom. I have made this statement at press conferences and I have never yet seen it emphasized or reported in the press. I wonder how many of you gentlemen know that fact?

Well, then, let us compare Canada's death rate of 25.3 with such countries as Norway with a rate of 9.5; England and Wales, 15.3; Sweden, 15.17; New Zealand, 16.6 and the United States, 24.8. There is only one way for Canada to go, and this leads up. We cannot go down. I am grateful to Dr. Stan Acres and Mr. Page of the Dominion Bureau of Statistics for helping me with these statistical facts, and I feel they are important. I have stayed with this problem because I keep asking myself: "Why is Canada so bad in this regard?"

Returning now to question No. 1, regarding bio-chemical tests, I would respectfully and strongly urge you to obtain the opinions of recognized and experienced experts in this limited technical and scientific field. This is what the Canadian Medical Association Committee did. This is too serious a problem to be solved by propagandists. Fortunately we have in Canada some highly qualified experts who have earned world-wide recognition. One of these is Dr. Ward Smith of Toronto, and I am delighted to learn from your Chairman that he will be appearing before you later. He was the vice president of the International Conference on Alcohol and Road Traffic in London, which I attended with him in 1962.

Mr. AIKEN: Dr. Troup, am I right in understanding that Dr. Ward Smith is a chemist, not a medical doctor?

Dr. TROUP: Yes, he is a Ph.D. I am perfectly right in calling him a doctor. I did not say he was a medical doctor. I was referring to the fact of this limited technical and scientific field.

Mr. AIKEN: Yes.

Dr. TROUP: After several years of study and investigation, the Canadian Medical Association adopted in 1961 the following recommendation:

The Committee recognizes further that the breathalyzer test, carried out by properly trained technicians, is an accurate method of determining blood alcohol levels, and recommends that the Canadian Medical Association also bring this procedure to the attention of the federal and provincial governments, and recommends that this test be used as a practical means of measuring blood alcohol in drivers of motor vehicles.

The Canadian Medical Association is, of course, well aware that there are other methods of determining alcohol levels using blood, urine, saliva, cerebrospinal fluid, et cetera. From my own studies, I find that there is no absolutely accurate test, no matter what bodily substance is used. This applies to blood as well as to breath, and in several respects the breath method has important technical and scientific advantages over all the other tests.

I might elaborate on that after I have finished my statement.

I understand that there are forty teams of trained technicians—provincial police—carrying out over ten thousand breathalyzer tests annually in Ontario, and the breathalyzer is used by the Royal Canadian Mounted Police in its provincial traffic police work.

In answer to question No. 1, I unhesitatingly endorse the use of the breathalyzer as a practical and reasonably accurate instrument for the determination of blood alcohol levels, when the test is carried out by properly trained technicians. I have a few reasons for my opinion:

- (a) With the breathalyzer, there is no question of assault.
- (b) There is no chance of infection by penetrating the skin.
- (c) The test can be performed by trained technicians without the help of a medical doctor.
- (d) Breathalyzer results are available immediately, and the test can be easily repeated and the results compared and still further tests carried out right at the time the policeman is making his investigation.
- (e) In making the test the breath passes directly from the suspect into the instrument, reducing the chance of contamination by other substances getting into it in the process of transportation.
- (f) The identification of the sample is simplified. The suspect is there and the instrument is there.
- (g) Breath samples may be collected in a plastic bag in sparsely inhabited areas. The Ottawa Police Department has very kindly sent me a sample if you would like to see it. I have it with me.
- (h) The standard deviations, found in all bio-chemical tests, can be offset by setting higher legal blood level limits.
- (i) The breathalyzer tests are recommended by the Canadian Medical Association, the British Medical Association, the American Medical Association, the World Health Organizations' Expert Committee on Alcohol—this away back in 1954, and it was not so enthusiastic then, but it recognized the test—and I was delighted to see in Monday morning's paper, I think it was, that the Quebec section of the Canadian Bar Association favours the breathalyzer test and that it be mandatory.
- (j) Then, there is one other point that I have added here at the end. Breath tests are already incorporated in our Criminal Code and I think they have been there since 1951. It is section 224(3): "In any proceedings under section 222 or 223, the result of a chemical analysis of a sample of the blood, urine, breath or other bodily substance of a person may be admitted in evidence on the issue." That was further confirmed in a letter which I received from the Department of Justice in connection with a brief I sent to Mr. Pearson about this whole problem.

I will now proceed to the second question, whether tests should be mandatory. As a citizen and as a doctor I feel I have perhaps worked long enough in this area to form an opinion. I am strongly in favour of the test being made mandatory, for the following reasons:

- (a) Each citizen should be treated alike in the investigation of traffic accidents.
- (b) The increasing percentage of refusals to take the test should call either for its abolition or a law to make it mandatory.

Dr. Peet—and may I add that he is the Dr. Peet who is now chairman of the C.M.A. committee in British Columbia—has said that in British Columbia the refusals to take this test when requested by the police had risen to 40 per cent; and Dr. Ward Smith has stated in London, England, that the refusals had risen in Ontario to 20 per cent in 1962; and the R.C.M.P. made an investigation right here in Ottawa and found the refusals increasing.

- (c) The taking of a test should not be dependent upon the salesmanship of the police officer or the sales resistance of the driver. That is what is happening in Ontario today.
- (d) The Canadian Medical Association Committee was impressed by the opinions of Professor A. R. L. Goodhart, an outstanding medico-legal expert and professor of medical jurisprudence at Oxford University, since retired. He has devoted much of his time to this particular problem, and I have with me a most interesting article that made a great impression on this medical committee. We have other authorities which we have read and we felt that we were on the right track in presenting our views.

Another reason is that I have with me the record of requests by provincial government ministers urging that the Criminal Code be changed to make breath tests mandatory. I have them here, too. I sent them to Mr. Pearson. They are quite clear-cut. They are from British Columbia, Alberta, Saskatchewan and some other provinces. I am impressed by the urgency with which these cabinet ministers, who are responsible for carrying out highway safety in their respective provinces, wish to see the law strengthened.

The third question about arbitrary blood levels should not be difficult to determine.

The level of .08 per cent has been suggested by the Canadian Medical Association, and when the Canadian Medical Association committee met with a committee of the Canadian Bar Association in Ottawa in March last year, the Canadian Bar Association view at that time was that they approved of a level of .08 per cent. The British Medical Association has recommended to the British government that an arbitrary blood alcohol level of .08 per cent be set, and the British government in its White Paper, of which I hope you all have a copy, also quotes the figure of .08 per cent.

This new law, however, would have some effect upon a deeply ingrained social habit or a combination of habits—that of drinking, that of driving and that of driving after drinking, which are deeply ingrained social habits; and, to make it more readily accepted by the public, perhaps a slightly higher level might be set at first, say, .10. This is the level adopted by New York State with a level of half that—.05—for suspects under 21 years of age.

In any case, if you have answered the first two questions the level could easily be settled and easily changed in the light of experience in this country and in other countries.

Next year is Canada's Centennial Year. What better way to celebrate the occasion than by enacting legislation that will make Canada's streets and highways safer for our citizens and our visitors?

The CHAIRMAN: Thank you, very, very much indeed, Dr. Troup. The attention that members have given to you is indicative of their extreme interest and the fact that they were absorbing to a 100 per cent degree, what you were saying.

Dr. Troup has, of course, agreed to answer questions, but before proceeding to that you will recall that he mentioned Dr. Ward Smith and Mr. Piper, who are going to be witnesses before this Committee. The Clerk has informed me that they will be here on June 7. The meeting of the Committee on June 7 is at 9.30, which means we will terminate at 11 o'clock. We may not be through with these two distinguished gentlemen by 11 o'clock and it might be in order to ask now for leave of the House to meet in the afternoon of that day, or, when we have out-of-town witnesses, while the House is in session.

If that meets with your approval I will be glad to have a motion.

Mr. FOREST: I so move.

Mr. HONEY: I second the motion.

The CHAIRMAN: It is moved by Mr. Forest and seconded by Mr. Honey that we request leave of the House to sit while it is in session for the purpose of hearing witnesses who are available but who will be here when the House is in session.

Any discussion?

Motion agreed to.

Now, Dr. Troup, if you will be good enough, I know that the members have a lot of questions that they would like to ask you.

Mr. AIKEN: The first question I would like to ask Dr. Troup is related to the comparative position of Canada and the United States. You showed Canada as last in relation to traffic deaths per mile, and so forth.

Dr. TROUP: Per 100,000 population.

Mr. AIKEN: Population; and I understood that this was also taken on the basis of million miles of travel.

Dr. TROUP: No. I stated that in dealing with Canada alone. The first few facts are related to Canada alone. Could I read it?

In 1964 the traffic death rate per 100,000 population in Canada reached an all-time high of 25.3. This unhappy trend is also shown if you use other yardsticks such as deaths per 100,000 registered cars and deaths per 100 million vehicle miles.

Now, I have the figures with me supporting this.

Mr. AIKEN: I was trying to find out whether you have any theories as to why Canada is worse than the United States in this scale, because of the fact that the vehicles in general are the same and the road conditions in general are the same. We are not very much below them, but there is a difference. Have you any idea why this is so?

Dr. TROUP: I wish I could say this authoritatively, but there is the difference that in a number of states they have much more realistic legislation regarding the drunken driver than we have in Canada. I think in six of the states biochemical tests are mandatory, and I think in another 12 or so they are permissive; that is, when you sign your application for a licence to drive you indicate you will submit to any biochemical tests that you are required to undergo.

I have not studied very much what is happening in the United States, because there is so much to study in Canada.

Mr. AIKEN: I have another question on a slightly different line, and it is on this question of mandatory tests.

The first thing that bothers members of the legal profession—and most of us here—is that there is a basic rule against self-incrimination. This is presumably the reason why the code makes it voluntary. Do you feel now that the situation is that the national interest overrides this basic rule, and that it is more important in this situation to determine the alcohol content and obtain convictions than the original protection that the law gave?

Dr. TROUP: Yes, I certainly do; and I look at Saskatchewan's efforts to overcome this defect in the law. They brought in a regulation—I am amongst lawyers, and I am completely out of my element, but you can correct me if I am wrong—Saskatchewan had the same limitations as the other provinces have with regard to the Criminal Code and biochemical tests, but they passed a regulation, which is administered by the traffic board, that if the R.C.M.P., who do the police work there, are asked to investigate an accident and they think the driver has been drinking they may ask the driver to undergo a biochemical test. It is a breathalyzer test, and if he refuses to have it, the police have authority to suspend his driving licence for a period of three or four months. It does not go to court and it is very much better just to hand over your licence for a few months and then get it back again from the police.

The proof of the pudding is the eating. Saskatchewan's death rate is not much lower than that of Alberta. I am speaking from memory. It is a little bit lower but the attorney general in Saskatchewan is one of the strongest spokesmen for mandatory breath tests. In the Saskatoon *Star-Phoenix* of September 12, 1964 the Honourable D. V. Heald, attorney general, says—and this is the headline: "Urges compulsory breath test and impaired driving standard."

He told the delegates at the annual convention of the Canadian Association of Chiefs of Police that he would recommend that a new summary conviction offence be created under the Criminal Code of Canada, prohibiting operation of a motor vehicle by a driver with a blood alcohol content of more than .06 per cent, and that the breathalyzer test be compulsory, provided that refusal by a subject to take one should not give rise to a penalty until the suspect appears before the highway traffic board. I have given you the gist of what he said.

Saskatchewan is strongly in favour of mandatory breath tests on a lower level even of that which other authorities have suggested.

Mr. AIKEN: Just one more question on that line, Dr. Troup. Can you clear up for me the relationship between breath test percentages and blood percentages? I am well acquainted with the blood percentages because that is what we have been using and when you mention .08 per cent, I think that most people who are up on impaired charges would be guilty if they kept it to that amount.

What are the figures on breath tests? What is the chemical content and how is it calculated?

Dr. TROUP: Now, you are going to hear Dr. Ward Smith, and at the outset I impressed upon you that I am not an expert in this field. It is a highly technical and scientific field; but as a doctor and having worked in this area, I have given it a great deal of study and heard a great many discussions, scientific and otherwise. But you are asking for an answer to a very technical question. It would be presumptuous of me to answer that in any scientific detail.

I would say, however, after reading the proceedings of your first meeting, that I got the feeling that you are under the impression that the blood test was the only accurate test; that it was the best test and that there was no deviation from it. Now, unfortunately, that is not so. I went out and spent a day at the biochemical department at the Civic Hospital, just last week before coming here, and I confirmed again that all biochemical tests have a plus or minus value—the high and the low.

In fact, in the doctors' cloak room at the Civic Hospital you will always find a chart, which is composed of two pages and a bit more. This is the quality control chart of all the biochemical tests that are done in the pathology department at the Civic Hospital. It gives an upper limit and a lower limit and then the mean; and for tests that are being performed every day the control is put up every day for the guidance of the doctors. If I were to hand you this you would read of a great many tests by blood, sugar, uric acid, and all these things, and you would find alcohol missing. You could ask me, "Why is not alcohol here and what is this blood alcohol? Why is it not here? Well, it is a very interesting story and I am going to take time, Mr. Chairman, to tell you.

The British Medical Association has developed what it considers to be a very refined method of examining alcohol in the blood, called the G.L.C.—gas liquid chromatography. I am not going to get out of my depth because I am reading from the *London Illustrated News* and it is not too scientific for me. This is a new instrument that determines the amount of alcohol in the blood.

They happen to have one of these instruments at the Civic Hospital. There are a few in Canada; it is an expensive instrument and it is one of the latest. It is not used very much at the Civic Hospital because the pathologists there, who, at the request of coroners are performing post mortems on drivers who have been killed in traffic accidents, send their blood samples to Dr. Ward Smith's laboratory in Toronto so that they will all be done in the same laboratory, with the same instruments, to try to eliminate certain abnormalities that might creep in. However, there are at the Civic Hospital patients whose blood alcohol might have to be determined, and that is why the instrument is there. I asked Dr. Poznanski, who is in charge of biochemistry at the hospital, "If you put this chart up for blood alcohol what would be the plus and minus value? He called up his technician and he asked what it was the last time he did the test and the answer was plus or minus 7 per cent in 100 milligrams. This shows that the blood test is not the exact one to which you seem to be pinning your faith here, and rejecting the breathalyzer test because it was not as good as the blood test.

Then, I am reading this from Britain—and this is "Drink and Driving—the Evidence in a Drop of Blood." "The beauty of this system, sometimes called gas liquid chromatography, or G.L.C. for short, is that it is fast, accurate and practically immune from human error." I used the words "reasonably accurate"

repeatedly this morning in referring to the breathalyzer test. Then, referring to this instrument it says that "... all this has proved that the Nottingham G.L.C."—that is, this instrument and after having great experience with it—"this G.L.C. method can measure 80 milligrams of alcohol in 100 millimeters of blood to an average accuracy..." Have I made my point? I hope I have.

If you are looking for a perfect test, beyond all reasonable doubt, you are not going to get it today, because it does not exist.

I think probably you will bring in the breath and the blood. What we want to get at is the amount of alcohol going to the suspect's brain. As it goes to the brain, through arterial blood, it has its load of alcohol from the stomach. As it passes through the lungs there is a recognized physical exchange—diffusion—of alcohol from the blood into the breath; and it is extremely accurate.

The CHAIRMAN: Thank you, Dr. Troup. Next I have Mr. Goyer and then Mr. Otto.

(Translation)

Mr. GOYER: I must confess that the reasons you gave for making the test mandatory have not convinced me because I think that, medically speaking, scientifically speaking, we should have found that the test had a value up to a certain point that would be absolute, but up to what point? You mentioned there was no test that really had an absolute value. Could you tell us what is the proportion of error in the breathalyzer test?

(English)

Dr. TROUP: Yes; it is .001 according to Dr. Ward Smith who will be appearing here before you and will speak from his practical work in hundreds of examinations comparing the breath and the blood at the same time.

(Translation)

Mr. GOYER: You mentioned, for instance, that in the State of New York, the age also had to be taken into account in establishing that such and such a percentage of alcohol actually affected people. Is that right?

(English)

The CHAIRMAN: Just a moment, Mr. Goyer. Dr. Troup, you are not hearing it either, are you?

Dr. TROUP: As I understand it—and I am not an authority on New York state law, or any law—my latest information is that there is permissive law in New York, that is, you give permission to the government to carry out biochemical tests, and the legal upper limit of blood alcohol is .10. However, if the suspect is under 21 years of age the level is lowered to .05. To me, this is no doubt as a result of New York state's experience with drivers and their ages—

(Translation)

Mr. GOYER: Now would you agree in saying that the physiological state of an individual can influence, can vary the percentage by a certain decimal point?

(English)

Dr. TROUP: I am very glad you have asked that question. All that the breathalyzer test shows is the amount of alcohol in the blood passing through that man's lungs at that time. It does not show how much alcohol he has

consumed, what kind of alcohol he has consumed, when he consumed it, whether it was mixed with food, whether he was tired, or any other physiological condition; it is just one simple fact that speaks for itself. Not the man himself speaking, but the scientific instrument, in which we have confidence, gives you that one reading showing how much alcohol was present in this man's blood at the time the test was made.

(Translation)

Mr. GOYER: Which means that if the test shows how much alcohol the person has imbibed, then his physiological condition can of necessity come into account. For instance, if a person was in a depression or some extreme emotional condition, as compared to someone who was in perfect physiological condition before consuming alcohol, then it could affect the results?

(English)

Dr. TROUP: It could affect what results?

(Translation)

Mr. GOYER: The results of the test.

(English)

Dr. TROUP: No, we are not saying whether he is intoxicated or not. We are not saying whether he is able to drive or not. The test does not tell you that.

(Translation)

Mr. GOYER: The test is going to show that above .08 per cent, the individual was not in a state fit to drive. If the law says that above .08 per cent the individual is guilty of having driven in an impaired state, that amounts to saying that at .08 per cent the person was not in a condition to drive a car.

(English)

Dr. TROUP: Well, experience has shown that after a person has taken a certain amount of alcohol his driving ability becomes impaired.

I have here the report on impaired driving tests, carried out at Rockcliffe by the R.C.M.P. in 1955, to which I would refer you for the answer. Numerous tests have been done to show that the first effect of alcohol on the brain of a human being is to disturb his judgment. The disturbed judgment affects his driving.

There is another very important study and that is the effect of small doses of alcohol on a skill resembling driving put out by the Medical Research Council of the Privy Council in 1959 and if you read these you would get very complete answers to your questions with regard to the increasing risks and the chances of accidents after imbibing. But it does not apply to one individual.

We have on the highway speed limits which apply to all drivers. You surely could not get away with the offence of driving at 80 miles an hour on a public highway when the speed limit was 50 miles an hour on the ground that you were an experienced professional driver and were much more competent than the average driver. That would lead to chaos.

(Translation)

Mr. GOYER: I quite agree that is the consequence that we will have to draw, but what I want to establish clearly here is that it is quite certain, if one

imbibes alcohol, it can affect the driving faculties of a person. But what we have to find out is to what extent. What I am trying to find out is that if a person who is in good physical condition as compared to someone who is, perhaps in a passing manner, or normally is very nervous, whether or not that is going to affect that person. The result of the test will be able to tell us if a person who was in such and such a condition before, after having consumed so much alcohol, is worse off than a person who was perfectly fit and who has consumed the same amount of alcohol. It would not be the same manner of driving in the case of these two people. If I can go a bit further—for instance, someone who is quite used to imbibing alcohol, if we compare him with a person who is not used to drinking, would you recognize that of necessity there is a deformation in the interpretation of the test?

(English)

Dr. TROUP: That is a very good question and it is beautifully taken care of in this Royal Canadian Mounted Police research. They took three groups of human guinea pigs—the light drinkers, the moderate drinkers and the heavy drinkers. I am speaking from memory now because it is some time since I really studied this volume, but the point was this: That in the early stages of the experiment when they gave just one or two drinks it seemed to have less effect on the heavy drinkers; but, when you got up to around .08 the percentage of errors by the heavy drinkers was just as high as those of the moderate drinkers and the light drinkers. Does that answer your question?

You speak about nervous conditions. We drive whether we are nervous or not. We drive whether we are tired or not. All these other factors have a part to play in it but this is the scientific determination of the amount of alcohol in the driver's blood at the time; and we do know, and must accept, that the more alcohol you have in your blood the more risk there is of your becoming involved in an accident.

(Translation)

Mr. GOYER: I am thinking in a personal manner, if you like. One day, you are going to drink just one glass and its effects may be bigger on you than on a day you consume three glasses. So, of necessity, the physiological condition would affect somebody's behaviour, in my opinion. But if you think the contrary has been proved by facts, well, then, that gives rise to questions between science—and I would have to revise my opinion.

(English)

Dr. TROUP: Well, on the question of physical fitness, alcohol only presents one scientific fact; but a traffic accident is investigated by a police officer, and you have other evidence of a person's behaviour. If he had been extremely tired or exhausted, if he had a medical disability, if he was under a certain drug treatment, if he was a diabetic—surely all these things would be brought out at the trial.

What this bill is initially aiming at is the establishment in every case—I forget the phrase—but where it would be justified to take this test, let it be taken, and have that one additional fact in the evidence for the administration of justice.

(Translation)

Mr. GOYER: That is the manner in which it is presented, I regret, because it seems to be that what is required is that the test be made compulsory, which is already debatable. And second, it is said that after a certain percentage, a person would be presumed guilty. That is going much further than what we have at the present time. That is exactly why I attach a great deal of importance to the percentage of errors due partially to the test itself, due to age, due to the physiological condition, to the habit of taking alcohol and the constitution of a given person. What worries me is the margin of an error that can be accumulated in the case of an individual who would be meeting all these conditions—a person who is young, a person who is not used to imbibing alcohol, a person who is in a depressed state, and then the test may have made an error. I do not know. In that case we may have a high percentage of errors, which might give results which would be unjust.

(English)

Mr. MATHER: Mr. Chairman, I have a related question. I wonder if the doctor could say what the percentage of fatalities is in the case of people who have imbibed alcohol? That is, roughly what percentage of fatal accidents are those which involve people who have been imbibing?

Dr. TROUP: In Canada there has been no complete study to enable us to answer that question directly, because investigators may not do a breath test on the highways arbitrarily; investigating people are not allowed to. But the coroners in Ontario and around Ottawa order the pathologists at the Civic Hospital to send the blood of all drivers, on whom a post mortem has been done, to Dr. Ward Smith of the attorney general's laboratory in Toronto.

Just last week I asked the doctor who handles this particular activity: "Without quoting any figures, what is your experience with the blood samples you send up from this district? What percentage of them have a significant amount of alcohol in the blood?" He said, "At least 50 per cent."

Mr. MATHER: Fifty per cent?

Dr. TROUP: Yes. That is not a scientific answer, Mr. Mather. Some studies have been done in other countries, but in Canada I have not got them.

I would point out that we have accumulated a tremendous amount of medical information. I hold in my hand here a statement prepared by the Traffic Injury Research Foundation, medical bibliography from 1955 to 1964. These are papers on the medical aspects of traffic accidents. A tremendous amount of work has been done.

The CHAIRMAN: Mr. Otto, you are next.

Mr. OTTO: Dr. Troup, you mentioned Canada's unenviable record in connection with traffic deaths. Are you suggesting that our record so far as drinking or drunken driving or accidents due to the use of alcohol is the highest in the world, or is that just traffic fatalities of all kinds?

Dr. TROUP: Oh, I did not break it down. But, as you study this question, this desperately bad situation in Canada, you ask yourself the question, "Why is it so much lower than it is in Sweden and Norway?" You go and study the driving and alcohol laws in those countries and you find, as you would see from the proceedings of your last meeting, that the biochemical tests were introduced in Norway in 1926. Of course they were blood tests because there were no

breathalizers at that time. You are forced to conclude that Canadians are just as good drivers as the Norwegians, Swedes or the Belgians. There must be some factor, and these countries with the most realistic legislation against drunken driving are enjoying the lowest mortality rates.

Now, although we are dealing with alcohol and driving this morning, I am under no illusion that the passing of this bill would wipe out traffic accidents in Canada. I would be happy in the first place to see the increase stopped. I would like to see us hit a plateau in the first year or two. Then, as we are more prepared administratively from the point of view of law enforcement, that our death rate might come down from 25 to 20. We might even come down to England's rate of 15 point something. Look at the enormous number of lives that would be saved. If we brought it down 10 per cent this year we would be saving 500 lives because you can almost bet there will be 5,000 killed in Canada this year. There were almost 5,000 last year.

Mr. OTTO: But nevertheless, Dr. Troup, it is still a presumption on your part that our heavy traffic fatalities are due to alcohol. It is only a presumption and not based on any records that we have.

Dr. TROUP: Oh, I am glad you brought that up. That brings me to another point, if I can find it.

When I was active in this field I used to receive a report from the Ontario Department of Highways. It was a monthly report of its fatal motor vehicle traffic accidents on the King's highway only. This is the last issue I received. I am sorry it goes back to March, 1964, but I made some comments about this at a press conference in June, 1964 and I seem to have been struck off the mailing list because they did not like my remarks. Of course, I am assuming this.

This is a most interesting document by the police, and it outlines all the fatal accidents on the King's highway during that month. It tells you the highway, the location, the character of the road, type of surface, surface conditions, light conditions and time, type of accident and persons killed and injured. Then there is the description of the accident by the Ontario Provincial Police. I quote: "driver drinking; driver drinking, lost control; pedestrian had been drinking, inattentive drunk; driver drinking, pedestrian 82; driver had been drinking; both drivers drinking; pedestrian drinking, speed, a boy aged four ran into a southbound small car but the driver had been drinking; driver drinking". Now, let me hasten to the conclusion and it says here, "Note: Drinking drivers and pedestrians involved in 22 fatal accidents or 53.7 per cent of the total fatal accidents in Ontario on the King's highway in the month of March."

Mr. OTTO: Well, Dr. Troup, as devil's advocate, so to speak, I would say that at least 50 per cent of the figures you quote were innocent drunkards who were not responsible for the accident. In other words, you always have two people involved and you never know who is responsible for the accident, and sometimes the innocent person as well as the one who suffers a fatality is also under the influence of alcohol. I do not suggest for a moment, Dr. Troup, that alcohol is not a great contributing factor; in fact, it is probably the most contributing factor.

Then in reply to a question previously put you said that you were under the impression that an arbitrary limit would have to be set. Now, I take it from our evidence that you would be in favour of setting an arbitrary alcohol

content in connection with traffic accidents. You pointed out there is a speed limit and that everyone is subject to this limit. I just wanted to question you on this because it will have a very serious effect on the question of law. Although, as you say, there is a speed limit and a person may be fined for speeding; but if he happens to get into an accident it still has to be proven that his speeding or that person was the cause of the damage or the injury. Now then, I am going to put it to you, as a witness to an accident or as a witness in court giving evidence as a medical doctor, regardless of the size of the individual, the health of the individual, the physical feeling and so on, would you not be inclined in time to arbitrarily say that a person was drunk if that alcohol content was found in his blood or on his breath? In other words, I am trying to find out the consequences of setting an arbitrary limit on the administration of justice. Would it be acknowledged in time that a certain arbitrary limit automatically would find that person guilty regardless of all the other arguments that could be presented by his counsel?

Dr. TROUP: Yes. The situation is becoming so bad; the slaughter is so great and increasing every year that you are faced on the one hand with the big broad public interest of safety for all users of the highway, and it is going to get worse if you do not make realistic legislation to combat it—and do it now; it is late. We are behind so many other countries in doing it. We know that those countries which have enacted this type of legislation against drinking and driving have not repealed it in one single instance, and as years go on they amend the legislation making it more and more severe. Just to give one example, in Norway they discovered that the lawyers were getting their clients off by saying, “Oh yes he had a high blood alcohol content, but one of the people at the scene of the accident gave him a swig of liquor after the accident to settle his nerves because he was upset”. But, it is now an offence in Norway to consume any alcoholic beverages after you have been involved in a traffic accident for the next six hours or until the police have completed its investigation of you.

Mr. OTTO: Of course, the Committee will have to consider at a later time these differences of opinion with regard to the law, freedom and so on between some of the other countries and Canada. However, I want to go further. In connection with the breathalyzer—and, you may not want to answer this—is it possible for a technician who operates the breathalyzer machine to tamper with it and to set it higher or lower in the event he so chooses?

Dr. TROUP: I have gone down to the research laboratory at Hockcliffe and I have seen many of these tests. What you are saying is that we could not always trust the police who were carrying out the tests.

Mr. OTTO: I am not saying you could not always trust them.

Dr. TROUP: But you said tampering.

Mr. OTTO: But, would it be possible on one occasion? Let us suppose that I am the police officer and I am taking the test. All of a sudden before me appears my most hated enemy; would it be possible for me to set that up or down?

Dr. TROUP: Of course it could be if you wanted to do it deliberately. But you are painting a picture that surely is not the case.

Now, I will give you the breathalyzer check. There are nine things the police technician puts down and the time that he does them. First, he takes a

check on the accuracy of his instruments; he does this by testing the air in the room in which the test is being carried out. Then he checks it with a known quantity of alcohol and if the breathalyzer in the first test says there is no alcohol in the room he records the exact percentage he knew he put through the instrument and then he knows that the chemical reagent that he put in in the form of a cartridge is up to standard. He then proceeds and carries out the breath test; having done that and secured a reading he waits another 15 minutes and he does the test over again. The advantage of the breath test is that he immediately knows the result. If it is very high, very low or abnormal he knows that a second check would be very valuable so he does it again a second time. He therefore has two readings. If by any chance they are not comparable, he can do a third test because he has the breathalyzer and the subject right there with him. That is how the test is carried out. And, he comes into court I believe—you lawyers would know—with all this information carefully completed in support of his test. I am surprised to think that there would be any tampering. I think these men are very proud of their reputations for accuracy.

Mr. OTTO: Sometimes, Dr. Troup, in your position you have a different opinion than we lawyers have. Mind you, it is not that the police department may be dishonest but sometimes the police forces or, let us say, the administrators of the police department have their own opinion of how law should be administered, and it is sometimes we solicitors or lawyers who have to constantly maintain a semblance of freedom. I have suspected at times, in my years of practice, that there was a little too much vigour on the part of police administrators in a sphere or in an atmosphere in which they think they are right; this sometimes happens with parking and speeding and so on. I think we have all been through that.

There is just one more question I would like to put. We have been concentrating on the consumption of alcohol and, as you say, our departments have made a great number of research tests and have been involved with projects in this field. Has any attempt ever been made to do any extensive research on hangovers; in other words, accidents as a result of the day after drinking or a few hours after drinking. I was reading a report quite recently in which the hangover was shown to produce the same results or even worse results than drinking, in other words, bad judgment, a feeling of depression and all these things. Have we ever done any research in that field?

Dr. TROUP: I am glad you raised that. It was discussed at the International Conference on Alcohol and Road Traffic in London in 1962, which I attended. There was a very interesting paper there. We have a traffic injury research foundation in this country, and I am sure, if you requested this foundation to carry out this type of test, it would be perhaps worth while and interesting. This foundation is sponsored by the Royal College of Physicians and Surgeons, supported by the Canadian Medical Association and a number of other bodies who are genuinely interested in reducing traffic accidents.

Mr. OTTO: Thank you.

The CHAIRMAN: I have Mr. Mather, Mr. McQuaid and Mr. Forest who want to ask questions. I understand Mr. Choquette has a related or supplementary question. It is now 11.00 o'clock but I am sure the doctor will be willing to carry on.

Dr. TROUP: I am quite willing.

The CHAIRMAN: Mr. Choquette, will you proceed.

(Translation)

Mr. CHOQUETTE: I would like to refer to the question that was previously asked by Mr. Otto; that is to say, whether the police would not be in a position to tamper with the test. Is there any possibility of returning samples? They can be handed over or retained so as to avoid any possibility of fraud.

(English)

Dr. TROUP: Yes, there are all sorts of precautions for the accused in this. He gets the result of the test and, if he wishes, can ask for a bag, breathe in his own breath at the time and have it examined independent of the police officer.

Mr. MATHER: Mr. Chairman, as the sponsor of this bill I am very pleased with the very thorough airing and consideration that is being given to it through Dr. Troup's testimony. I just have one or two brief questions. I will not deal with the area in respect of the validity of the tests.

In sponsoring the bill I did some studying and I am personally convinced that the breathalyzer test offers a very good standard by which to judge these things. But, with regard to the points about civil liberties being involved here, Dr. Troup, would you agree that the lack of a mandatory test creates a situation which tends to protect the guilty while offering no shield at all to the innocent.

Dr. TROUP: I certainly do. These accidents are sufficiently frequent. They have affected every one of our families and we all must have had personal experiences about that. The innocent are certainly not protected in our present day laws.

Mr. MATHER: Having in mind the fact that under present day laws the person who is involved in an automobile accident is compelled to remain at the scene of the accident to produce papers for the ownership of his vehicle, his right to drive that vehicle and also sometimes to submit the vehicle to a mandatory test at the scene of the accident. Would you not agree with me that the addition of this one further step, the mandatory breathalyzer testing of the physical condition of that driver, is simply part of what is becoming a traffic safety shield?

Dr. TROUP: Yes. We are into an area on which I do not like to speak before this Committee with too much assurance, but here is a quotation from Dean I. C. Rand, retired Justice of the Supreme Court of Canada, and one of Canada's foremost legal minds. It says here he favours the use of the breathalyzer. He said:

It has actually been proven and it is a major weapon in the war on highway deaths and injuries. The breathalyzer is very relevant evidence. Its evidence is simply a fact. It must be made compulsory. If you do not make it compulsory, drivers will feel that they have a right to drive while under the influence. I do not see how you will deal with the slaughter on the highways unless you have something like this.

This ties in too with the percentage I gave you of refusals to take the test and the refusals are usually by those who have had a brush with the law before. They are wise to the fact that they do not have to undergo the test. Dr. Smith of

the Ontario Attorney General's department estimated that 28 per cent of drivers involved in fatal accidents had alcohol problems. And you know that an alcoholic is conditioned to defend himself, to wriggle out and make excuses. So, he knows the law is on his side and he says, "I will not submit to a biochemical test."

Mr. MATHER: Mr. Chairman, those are all the questions I have.

Mr. OTTO: Mr. Chairman, just on that one point so the record will be straight. Mr. Mather has pointed out, and so has Dr. Troup, that you have to stop, you have to produce your licence and you have to produce your insurance. All these are facts which will not incriminate you. In other words, they will not find you guilty. But I suggest that as Dr. Troup pointed out earlier, the fact of having a certain percentage of alcohol would automatically find you guilty because the witnesses, like Dr. Troup, will have an arbitrary figure in their heads as to the amount of alcohol and this particular fact will find the driver guilty whether in fact he is guilty or not. That is the difference you had not pointed out, Mr. Mather.

Mr. MATHER: If I could just say a word to that. I think if one is involved in an automobile accident and is asked to produce his driver's licence and he fails to do so, or if his car is examined—and he must submit to that examination of his car—and the car is found to be faulty, I think these elements would also play a part in determining judgment.

Mr. OTTO: They do not, not as a rule.

The CHAIRMAN: Mr. McQuaid.

Mr. McQUAID: Mr. Chairman, my question may have been answered by Dr. Troup in reply to a question by Mr. Otto but I just want to clarify this. This afternoon, we will say, I am picked up and charged with impaired driving. There has not been any accident; there is a compulsory breathalyzer test and the rate set is .10 we will say, and the test shows that I have .10 alcohol in my blood. Are you suggesting that that is an irrebuttable presumption that I am impaired—that is, I cannot produce any evidence to show, even though the breathalyzer test may read .10, that the test was not properly taken or that my physical condition was such that I am still not impaired with .10 alcohol in my blood?

Dr. TROUP: You are dragging me into the legal field against my will. The test will just show the amount of alcohol in your blood. It will not show anything about how impaired you were as a driver. That is all the test will show. Are you not reading too much into the test?

Mr. McQUAID: It is not an irrebuttable presumption then. I presume that I could still be allowed to produce evidence to show that even although I may have that alcoholic content it does not necessarily prove that I was impaired at the time.

Dr. TROUP: It would depend on what the law is at the time. You are saying this afternoon. Well, in the first place you would not have to undergo the test if you did not want to. You said it was compulsory but it would not be this afternoon in Canada. You have been asked to take the test and you have taken it. That test just shows one fact. As Justice Rand says its evidence is simply a fact that at the time of the accident or immediately after the accident you had a certain amount of alcohol in your blood. That is as far as it goes.

Mr. McQUAID: I would be still free to introduce evidence that the test was not properly taken.

Dr. TROUP: If you could prove it, yes.

Mr. McQUAID: That is what I mean.

Dr. TROUP: But you would have Sergeant Burnett of the Ottawa Police department up against you.

Mr. FOREST: This is a related question and it is quite important. I believe the main objection to the breathalyzer test is that it does not take into account the individual's tolerance for alcohol. Some people might show a level higher than .08 and still would not be intoxicated to the point of impairment. In this bill we have stated that a level of .08 would be conclusive evidence that the ability of the said person to drive is impaired. Now do you think we should raise this level to .10, as you have mentioned, to take care of all these marginal cases. Is it safe at .08?

Dr. TROUP: These tests show that the extra hazard starts when the blood alcohol level reaches .04 or .05, or when the blood alcohol level is up to that. When a person goes on the highway with a blood alcohol level of .08 he is classifying himself and he is putting himself, deliberately or otherwise, into a group of drivers who are much more likely to have accidents than those who have gone on the highway without alcohol, or with very small amounts of alcohol.

Mr. LAFLAMME: That would apply to everybody.

Dr. TROUP: Everybody, yes; just as it applies to speeders breaking the law.

Mr. HONEY: Doctor, I just have one question and if you can answer it I think it might assist me in evaluating the evidence. I am just wondering if, from a personal standpoint, and as a result of your studies and research into this matter, you would feel it desirable, or a desirable goal for legislation in Canada, to provide that when the level of alcohol in the blood reaches a certain point—say, .08 or .10, or at least a point which was defined in the legislation—that would then mean a conviction for impaired driving or drunk driving, as the case may be? In other words, do you think it is desirable to have that as an overriding and exclusive factor.

Dr. TROUP: Yes; I do today. Mr. Pearson, you know, in 1964, urged every citizen "...to recognize and fully accept his own individual responsibility in correcting the causes of the death in the traffic toll, through the persistent co-operation of every Canadian..." I therefore wrote to Mr. Pearson and gave him a lot of facts. I finished the letter by saying, "In response to your letter I ask you, in your position of great responsibility and authority, to initiate amendments to the Canadian Criminal Code to enable provincial governments to require suspected drinking drivers involved in accidents to undergo biochemical tests the results of which would be used as corroboratory evidence in court".

Since I wrote that I have studied the British White Paper. They are terribly concerned about their traffic deaths and it is almost half of ours. They are proposing to bring in legislation which will make a certain blood alcohol level *prima facie* evidence. If this bill passes in Britain you have broken the law if you drive a car on a public road with a blood alcohol level of more than .08.

I was impressed with the studies the Canadian Bar Association gave this important matter and I mentioned earlier that the president and the secretary and Mr. Isbister spent a whole day with our C.M.A. committee, and they gave us a brief that they had submitted to the Minister of Justice.

I know that it has been stalled, just as many of our recommendations have been stalled in the medical association. But eventually, by further study, we made progress.

I was impressed by the fact that the Canadian Bar Association, in tackling this as a serious national problem, has gone as far as the British government went last December—or as far as the British Government's White Paper went. Therefore, if I were writing this brief I would stress as *prima facie* evidence, that with a certain amount of blood alcohol in the system you should not be driving.

Mr. HONEY: That is, when the blood alcohol reaches a certain point that is *prima facie* evidence that the driver is impaired?

Dr. TROUP: Yes. Now, the only suggestion I made that might not have agreed with Mr. Mather's bill—and it was just a suggestion—is that because of the deeply ingrained social habit and the opposition that you will get—which you will get from anywhere—it might be safer to have it a little higher than it should be; and then, in the light of experience, you can have the level amended and brought down as other countries have done. Sweden and Norway started with .15; they went down to .12, to .10, to .08, and now they are down to .05.

Mr. HONEY: Do you have enough faith in the accuracy of the breathalyzer test, doctor, to feel that it would be responsible to place a driver in the position where he could, in fact, be convicted by this evidence alone?

Dr. TROUP: Yes, I have.

Mr. HONEY: Mr. Chairman, may I ask just one more question?

Mr. McQUAID: Oh, I am sorry. Go ahead.

Mr. HONEY: This is in connection with your last statement. Do I understand your conclusion to be, then, that the result of this test should only be *prima facie* evidence?

Dr. TROUP: Yes; I am speaking as a private individual now.

Mr. HONEY: Yes, this of course does not go along with the text of the bill.

Dr. TROUP: It does not go along with all—

Mr. HONEY: Is it not conclusive?

Mr. MATHER: No, the bill provides for the mandatory testing.

Mr. HONEY: But does it not say that it shall be conclusive evidence?

Dr. TROUP: Yes—

Mr. HONEY: But your proposition is that it should not be conclusive evidence but that it should only be *prima facie* evidence—that is, evidence which is rebuttable?

The CHAIRMAN: I do not think that the witness has to answer that question. It is a legal question.

Mr. HONEY: No; but I am just wondering what his thinking is on it; it will help me arrive at a decision.

Dr. TROUP: I could make this statement, because I have been working in this area since 1955: My views have changed—they have never been fixed—and I am becoming more and more convinced that a drastic situation has developed, which will require drastic legislation. I have seen such statements made in *Hansard* which I have searched for a long time.

Mr. LAFLAMME: Doctor, to deal with the opposite side, I just would like to know this: Is it possible to drink less than three ounces of alcohol and have a result on breath analysis, higher than .08 per cent.

Dr. TROUP: Well, three ounces of Canadian whisky—I mean alcohol! This is very important, you see. So many factors enter into it. Is it British whisky or is it the Canadian watered whisky? You see there is a difference in proof. I could not answer that question categorically.

The big thing is that by adopting .08 you could still be driving on the highway with a blood alcohol less than that and be responsible for killing somebody because you were impaired. We cannot drink up to .08 and drive with impunity on the highway.

Mr. LAFLAMME: I agree with that.

Dr. TROUP: Now, you want to know whether three ounces—

Mr. LAFLAMME: Well, suppose a man has drunk three ounces of alcohol and they take his breath analysis. Is it possible that the result could be around .08 per cent?

Dr. TROUP: Oh, I do not think so. But would you ask Dr. Ward Smith that? I do not think so at all. That would be away too high.

The CHAIRMAN: Are there any more questions?

Then, I think, once again, Dr. Troup, the Committee would wish me to thank you for your attendance here this morning, for your very instructive discussion and for the very excellent way in which you have answered the questions which have been put to you. Thank you very much indeed, sir.

Dr. TROUP: It is a pleasure, Mr. Chairman.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

FRIDAY, MAY 27, 1966

Respecting the subject-matter of

- Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).
Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).
Bill C-87, An Act to amend the Criminal Code (Impaired Driving).
Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and
Private Members' Notices of Motions Numbers 26 and 31.

WITNESS:

The Hon. C. M. Drury, Minister of Defence Production.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Ryan,
Mr. Asselin (<i>Charlevoix</i>),	Mr. Laflamme,	Mr. Scott (<i>Danforth</i>),
Mr. Bell (<i>Carleton</i>),	Mr. Latulippe,	¹ Mr. Stanbury,
Mr. Choquette,	Mr. MacEwan,	Mr. Trudeau,
Mr. Chrétien,	Mr. Mather,	Mr. Wahn,
Mr. Fulton,	Mr. McQuaid,	Mr. Woolliams—24.
Mr. Goyer,	Mr. Nielsen,	
Mr. Guay,	Mr. Otto,	

(Quorum 10)

R. V. Virr,
Clerk of the Committee.

¹ Mr. Tolmie replaced Mr. Stanbury on May 16, 1966.

ORDER OF REFERENCE

WEDNESDAY, May 25, 1966.

Ordered,—That the Standing Committee on Justice and Legal Affairs be permitted to sit while the House is sitting to meet the convenience of out-of-town witnesses when they appear.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

FRIDAY, May 27, 1966.
(8)

The Standing Committee on Justice and Legal Affairs met this day at 9.50 o'clock a.m. The Chairman, Mr. A. J. P. Cameron (*High Park*), presided.

Members present: Messrs. Bell (*Carleton*), Cameron (*High Park*), Guay, Honey, Latulippe, Mather, Ryan, Tolmie, Trudeau, Woolliams (10).

In attendance: The Honourable C. M. Drury, Minister of Defence Production; Mr. W. H. Huck, Assistant Deputy Minister Supply, Department of Defence Production and Mr. J. E. Hanna, Canadian Government Specifications Board.

The Chairman tabled the following publications that he had received from Senator Warren G. Magnuson, Chairman of the Committee on Commerce, United States Senate:

Bill S.3005 regarding Safety Standards for motor vehicles; Committee on Commerce—Legislative Calendar, April 1, 1966; Traffic Safety Hearings, Committee on Commerce.

Moved by Mr. Ryan, seconded by Mr. Tolmie,

Resolved,—That the said documents be identified as exhibits 1, 2 and 3 and be held with the records of the Justice and Legal Affairs Committee.

The Chairman introduced the Minister of Defence Production who presented a brief concerning the activities of his department in relation to the drafting of an Automotive Vehicle Safety Code.

Following the presentation, the Members questioned the Honourable Mr. Dury.

On behalf of the Committee, the Chairman thanked the Minister and at 10.55 o'clock a.m., the meeting adjourned to the call of the Chair.

R. V. Virr,
Clerk of the Committee.

EVIDENCE

FRIDAY, May 27, 1966.

● (9.45 a.m.)

The CHAIRMAN: If it meets with the approval of the Committee, I am going to ask Mr. Drury to proceed and hope that later on we will have ten and validate the decisions. Is that agreeable?

There was a meeting of the steering committee yesterday. There were no minutes taken because I did not know whether it was going to take place or not; I sent the secretary back.

Just one or two short announcements. On Tuesday, June 7, Dr. Ward Smith, Ph.D. and Mr. R. M. Anthony, representing the Canadian highway safety council will be here. We have permission to sit that afternoon if we cannot conclude the hearings in the morning sitting. I have also been given the name of Dr. Lucas who is supposed to be a breathalyzer expert from the University of Toronto. We have already had Dr. Troup who is an expert on the matter, and Professor Ward Smith is also considered an expert. I did not think myself it was necessary to have three of the same classification, and the steering committee agrees with me that probably we would not call him unless there was a demand for it.

I have a letter from Senator Magnuson the chairman of the commerce committee of the U.S.A. Congress and he has sent a lot of material here. Bill S-3005 to provide for a co-ordinated national safety program and establishment of safety standards for motor vehicles and inter-state commerce to reduce traffic accidents and the increase in death and property damage which occurs in such accidents; the hearings are before the Committee on Commerce of the United States Senate with respect to Bill S-3005 I would entertain a motion that these be made an Exhibit to the day's proceedings.

Mr. RYAN: I so move.

The CHAIRMAN: Moved by Mr. Ryan, seconded by Mr. Tolmie. All those in favour?

Motion agreed to.

The CHAIRMAN: The Minister of Industry is here, together with officials from his Department who are going to discuss, as I understand it, a proposed code, or something of that nature, in regard to safety devices. We have had Mr. Southam, Mr. Wahn, Mr. Grafftey, and we had a moving picture in regard to safety devices. I think the Committee are in agreement that unless somebody wants it, we will not be calling any more witnesses after Mr. Drury, in regard to safety devices. We will proceed to prepare our report on the subject matter referred to us. Is that agreeable?

Agreed.

Well, then, Mr. Drury, you need no introduction to this Committee. You may wish to introduce the two gentlemen who are here with you.

Mr. DRURY (*Minister of Defence Production*): Yes. Mr. Chairman, with me today I have Mr. Huck on my right, who is the assistant deputy minister of the Department of Defence Production, who has an over-all responsibility in so far as my ministerial responsibilities are concerned with the automobile safety code; and also a representative of the Canadian Government's Specifications Board, Mr. Hanna. It is the Canadian Government's Specifications Board, as I will make clear, which is undertaking the basic preparatory work and the co-ordination of the preparation of an automobile safety code.

● (10.00 a.m.)

Let me say at the outset that the government is much concerned with the very high level of damage, both human and material caused by road accidents which seems in the past year to have been increasing rather than decreasing. The extent of this has perhaps raised it to the level of a national rather than a local problem. In response to this rising and recognized need, last September I issued a press release announcing that the Canadian Government Specifications Board had been asked to prepare an automobile vehicle safety code. Because most legislation dealing with motor vehicles is provincial and the regulation of automotive traffic is exclusively a provincial jurisdiction it seemed clear that the proposed code would have to be a recommendatory rather than a mandatory documents for the guidance of government agencies, industry, commerce and the general public. It was decided that the proposed code should comprise or cover three main areas of interest: the human factor, the mechanical factor and the environment.

The code would thus consist of three parts which I might describe briefly as follows:

Part 1 of the code would deal comprehensively with aspects of the human factor in relation to traffic safety and present recommendations for bringing about the improvements in respect of this.

Part 2 of the code would deal comprehensively with safety features and accessories related to the safe operation of automotive vehicles and would be intended to achieve the highest practical degree of mechanical safety in the operation of such vehicles. Included in this part would be a compilation of performance standards covering known safety devices.

Part 3 of the code would deal comprehensively with aspects of the environmental factor, mainly the road itself, of course, in relation to traffic safety and would present recommendations for achieving improvements in this regard.

The proposed automobile safety code would, I would suggest, be useful in that it would for the first time, and from a single authoritative source, make available a logical codification of the best information on the cause and prevention of accidents; secondly, provide information on the relation between driver capabilities and accidents; thirdly, furnish a set of standards for safety features for incorporation into specifications for vehicles purchased by all levels of government, industrial and commercial organizations and hopefully the general public. It would provide information on the relation between the road

environment and accidents, and encourage the proper use of existing safety features. It would assist purchasers in the wise choice of a vehicle by giving top priority to its safety features. It would encourage proper maintenance of all vehicle safety features. It would indicate areas for further research in the human, mechanical and environmental factors that contribute to accidents, and it would finally encourage and promote greater uniformity in the legislation that generates regulations controlling licensing of drivers, vehicle inspection and maintenance, traffic signs and enforcement of rules of the road.

It may be of interest to add that the government has already authorized the inclusion of a number of safety standards in the specifications for vehicles it is currently purchasing for use by its various departments and agencies.

I am pleased to report, Mr. Chairman, that the three parts of the code have now been completed in a preliminary draft and that the printing of the entire draft code should be completed by the end of this month. Copies will in the first instance be submitted for study by the members of the committee set up for this purpose by the Canadian Government Specifications Board. That committee, which will give it first study, has representations from the provincial governments, agencies of the federal government, the Motor Vehicle Manufacturers' Association and a number of organizations interested in the various aspects of the highway safety problem.

The first meeting of the CGSB Committee will be held in Ottawa on 20-21 June 1966.

Hopefully, the code will serve its intended purpose. Admittedly, it cannot of itself solve the complex traffic accident problem. What more could and should the government do? For one thing, it has been asked to take the lead in co-ordinating a continuing, more direct national effort towards the reduction of the traffic accident rate to the lowest possible limit.

While much research has already been done in this field, it is evident that there is need for continuing research to develop further information and to update the revise earlier findings. There is also the problem of utilizing present knowledge, which also would require co-ordinated effort.

The government is therefore considering what role it may usefully play in co-operation with the provincial governments. Theirs is the jurisdiction and responsibility in regulating the human and mechanical and environmental factors contributing to the traffic problem. It may be that the Federal Government can make a unique contribution within the context of research investigation, the flow of interprovincial traffic and export-import trade. This possibility is being studied by the several departments whose responsibility it is to bring them within the spectrum of the traffic problem. This in brief then, Mr. Chairman, is the present indication of what the federal government, as a government, is doing, and if I can clarify or expand any of this, or answer any questions I would be glad to do so.

The CHAIRMAN: Thank you very much, Mr. Drury, and I know many will want to ask quite a few questions. Mr. Tolmie I see has his hand up, and Mr. Honey, Mr. Mather.

Mr. TOLMIE: Mr. Chairman, I was wondering what amount of liaison there has been for example, between the Ontario government and the federal

government in the drafting of the code. For example, we have now a proposed code. Is it not possible that Ontario put out a code which may in certain respects differ and be contrary to certain recommendations in the code that you now are putting forth?

Mr. DRURY: There has been informal liaison between the Ontario government and the federal government. They are aware of what is being done, and they are going to participate as members of the committee I just mentioned, in studying and either approving or suggesting changes in this draft code.

You will be aware that the legislation proposed by the Ontario Minister of Transport is of a rather general and permissive character, and if it is passed it will not, in legislative form anyhow, tie the Ontario government down to particular rules, but rather a general framework in which rules can be made. One would hope that arising out of the discussions between the federal-provincial and other bodies at the meeting on June 20-21, some consensus might be obtained as to what would be the kind of rules which would be appropriate on rather a national scale, but probably to be put into effect by the provincial governments.

Mr. MATHER: Mr. Minister, we have had some evidence before this Committee and some argument, notably I think from Mr. Grafftey, along the lines that it is the responsibility and duty of the federal authority to legislate in this field on a mandatory basis to establish a safety code and to ensure that all automobiles manufactured in Canada and imported into Canada comply with this code. I am not satisfied in my own mind and I wonder as to the jurisdictional aspect of this question. From your remarks this morning I take it that the code that is now being considered by our department will be of a permissive nature or, persuasive maybe would be a better word. Can you tell me if your view or the federal authority has any opinion or are considering the matter as a jurisdictional question as between the federal and provincial authorities, with relation particularly to a mandatory code?

Mr. DRURY: There are two aspects of this question. One is the desirability of the federal government exercising a mandatory jurisdiction. The second is that if that is desirable. Then the question arises as to whether this is in constitutional terms, achievable. I do not think that the question of desirability has yet been satisfactorily resolved. You may have noticed that in the United States there is a distinct reluctance on the part of the federal government, and the federal administration, to accept mandatory legislation. They are opposing the advocacy of this by some of the members of congress.

There is clearly some evidence that the most effective means of improving the mechanical safety of automobiles is the mere fact of publicity, widespread public knowledge regarding the failure of manufacturers in some instances to achieve safe vehicles, and this has had, in at least one instance, so significant a consequence, in economic terms for the manufacturer that it is quite clear that they are probably as concerned, as anyone could expect them to be. With the necessity of ensuring that vehicles put on the road do conform to a high degree of mechanical safety, and that if in this way, it becomes desirable from the manufacturer's point of view to ensure mechanical safety, a more satisfactory result might well be achieved than if an endeavour is made by legislation to

enforce, on an unwilling group, a set of rules which may or may not be workable. So this general issue is not yet I think satisfactorily resolved.

Secondly, we have sought legal advice on the extent to which there is federal jurisdiction in this particular field. The result of seeking such advice is what one might expect, namely, a lack of precision, a lack of complete clarity. It is clear that in respect of export of mechanical vehicles, the federal government has jurisdiction, over their size, shape, form and content; that in respect of vehicles engaged in interprovincial activities that the federal government has jurisdiction, but it is equally clear that in respect of vehicles which are manufactured and used in one province alone, the federal government has no jurisdiction. It would seem to me desirable that if we can achieve the object we are seeking, of getting vehicles having a higher degree of safety incorporated in them through a voluntary co-operative effort, this is much better than endeavouring to assert what may be a questionable legislative jurisdiction.

Mr. WOOLLIAMS: May I ask a related question raised by what the Minister had to say in reference to jurisdiction, or whether you have a mandatory or voluntary approach to the subject. I think from a practical point of view—it may be a little abrupt to ask this question at this stage—the United States would really have the control of the company, and they merely have the subsidiaries here making automobiles. They set the tone for the safety, as far as automobiles are concerned, and are we not if we are practical and honest with ourselves, as Canadians, controlled by the approach from the United States as far as the automobile industry is concerned. I am thinking in particular, when we were talking about exporting automobiles to a Communist nation manufactured here in our own subsidiaries of United States Companies and their law prevented those companies from selling and trading with those countries and the Canadian subsidiaries did do it. I am not passing any criticism of your government because it happened under ours as well. It is a practical problem and I just wondered what your approach is to that.

Mr. DRURY: There is no question about it that motor vehicles are designed, and to an increasing extent being manufactured, on a North American continental basis. As a consequence the degree of complete independence we have to prescribe what are going to be the features incorporated in cars which operate in Canada is in a practical way, rather limited. Obviously we could prescribe that no car having more than three wheels, for instance, could be imported into Canada, but this would rather disrupt the whole scheme of motor transportation in Canada, in that the Americans seem to have a preference for cars with four wheels. They are likely to go on manufacturing cars with four wheels, and perhaps not pay too much attention to this three wheel Canadian demand.

This is a hypothetical case but it does support what you are saying, and probably we can be most effective in the field of organizing information and doing research work leading to conclusions which will appeal not only to the manufacturers but also the United States administration. Because they are good, sound and reasonable.

The United States administration itself, apart from any legislative arrangements is laying down for all federal government purchases, and these are in some numbers, safety standards for the vehicles that they buy. If the United

States administration can secure the support of a couple of the larger states for insisting on the same standard in respect of their operation, then this practically sets the pace for the whole North American market. In this sense, the Canadian market is analogous to one of the, not the largest state, but one of the larger United States states, in terms of consumption.

Mr. WOOLLIAMS: Well, I am inclined to agree with your statement, Mr. Minister.

Mr. MATHER: Mr. Chairman I wanted to say that I think the general approach being made by the Minister and his assistants to this problem is an excellent one, in line with the explanation of the three-way code which is being aimed at dealing with the vehicle, the driver, and the road. I realize and recognize the constitutional difficulties involved if legislation were favoured by the government, but I point out, as you have said earlier, the traffic toll is now really a national thing in its ramifications. We are killing a hundred people a week. You know the figures as well as or better than I do. All our traffic safety bodies are organized, and many of the major ones, on a national basis because this is really an interprovincial-national problem. Canadians are more and more mobile. We are not just driving in one area or province, but we drive across and we drive north and south. What I would like to see you and the department do, when you get this committee which is going to be dealing with the proposed code, if through whatever considerations they are going to give to this, is to emerge with a target of getting interprovincial action under federal leadership.

● (10.15 a.m.)

It is true that toward traffic safety and the adoption of legislation, the Americans control or influence a good deal of the safety features, or lack of them in Canadian cars, but as you have indicated, this is only one of the three elements involved here. The others are the signing, road traffic signing, and the road conditions, grading, and so on, and of course, the condition of the driver. That brings up one thing, in my particular interest there, but certainly the driver is a very important element in accidents, or freedom from them. So, in brief, I like the approach. I think it is a very good one, taking in all the aspects concerned. I fear that it will not be effective unless eventually we come to some interprovincial type of legislation making this safety code mandatory. I would urge that consideration be given to that idea.

Mr. BELL (*Carleton*): I have two matters. Mr. Drury has spoken of the jurisdictional problems and I assume that an opinion of the law officers of the crown has been secured in respect of this and I am wondering whether he would feel disposed to make that opinion available to members of the Committee for the guidance of the Committee.

Mr. DRURY: I am told that it is not the practice to publish these.

Mr. BELL (*Carleton*): I think it is true that it is not the practice, although it has been done on a number of occasions.

Mr. WOOLLIAMS: There was a great demand, for a legal opinion on the subject.

Mr. DRURY: Yes, I seem to recollect some discussion in that respect. If the Committee feels that this would be of critical importance to their deliberations,

then I might be persuaded to do it. But I do not think one would want to establish a precedent of this kind; if it is not really of cardinal significance.

Mr. BELL (*Carleton*): I would not describe it as of cardinal significance, but it does seem to me that this is an important field and while the Minister's statement has been reasonably clear, I think we should have on the record as much detail as possible. I think there is very considerable misunderstanding in Parliament as to what the legislative jurisdiction is in this field.

Mr. DRURY: Well, let me say that this document will not help too much to clear up this misunderstanding but rather to reinforce the notion that it is unclear in some aspects. It is clear that in so far as motor vehicles produced and used in a province are concerned, these fall under provincial jurisdiction and not under federal jurisdiction at all. It is clear that vehicles produced for export or for interprovincial use fall under federal jurisdiction. Now, the problem is to try and separate in this field rules governing cars which are for export and those which it would be argued are used exclusively within a province. These cars all coming out of the same factory and during the process of manufacturing it may not be too clear where they are going.

Mr. BELL (*Carleton*): Most of them come out of a factory in Ontario and a great many of them go to other provinces. The mere crossing of the boundary does not bring them into interprovincial trade?

Mr. DRURY: Yes. This interprovincial trade in this country, however, is a basis for federal jurisdiction which has not over the years very seriously been put forward by federal governments. As you know, in the United States this is the whole basis for federal regulation of almost all internal commercial activities.

Mr. BELL (*Carleton*): It has only been defined in the Winner case here, I think.

Mr. DRURY: That is right. And in a sense, one would be starting off on a new, perhaps challenging, perhaps exciting tack, if one were to start this; but my own feeling for the moment is, rather than trying to achieve our objects through jurisdictional or legislative gambits, it would be better to try first the avenue of seeking co-operation.

Mr. BELL (*Carleton*): I will not press the matter, Mr. Chairman, on the production of the opinion, perhaps except to suggest to Mr. Drury, that he might consider it with his officers and with the deputy minister of justice, and if they saw no objection I think the Committee would welcome it. If they do see objection, and I am anxious not to establish bad precedents, in the situation, I will not press it at all.

Mr. WOOLLIAMS: I wonder if I could ask one related question in reference to jurisdiction. It might be the time to put it on the record. Of course I have not seen the legal opinion, and what Mr. Bell said, and what you have discussed with Mr. Bell, and I question whether we do have jurisdiction; but it does seem to me, when you are considering this problem, as the federal government controls the use of drugs for human welfare, in a sense, the protection physically and mentally and the human welfare of the person, safety in an automobile is certainly for the human welfare or the protection of the human

being. There might be a new principle of jurisprudence established here in the interpretation of the jurisdictions. We might be putting it on a different basis, and that is what develops the precedents we might need it if it came to the position where we are going to legislate in this field in a mandatory way. Then of course, an opinion of the Supreme Court of Canada in this regard in the usual way could be obtained. I just throw that out as a thought.

Mr. BELL (*Carleton*): The other point that I wanted to ask Mr. Drury about was when he anticipated that the draft code would be made publicly available.

Mr. DRURY: As a draft?

Mr. BELL (*Carleton*): As a draft.

Mr. DRURY: I might just indicate to you that membership on this Committee is being sought—probably it might be better described as a Conference rather than a Committee Meeting—from—the All Canada Insurance Federation, the Automotive Industries Association, the Automotive Transportation Association of Ontario, the Canadian Conference of Motor Transport Authorities, Canadian Federation of Mayors and Municipalities, Canadian Good Roads, the Consumers' Association, the Motor Vehicle Manufacturers Association, Friction Material Standard Institute Incorporated, Professional Institute of the Public Service of Canada, Rubber Association of Canada, the L'Association des Médecins de langue française du Canada, the Canadian Automobile Association, the Canadian Forces Medical Services, the Canadian Foundation on Alcoholism, the Canadian Highway Safety Council, the Canadian Public Health Association, the Defence Research Board, the Department of National Health and Welfare, the Medical Research Council, Canadian Forces Headquarters, a large user, the Dominion Bureau of Statistics, the Government Motor Vehicle Committee, the Department of Industry, the National Research Council, the National Aeronautical Establishment, the Department of Public Works, the Department of Transport, the provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan; the Alberta Safety Council; the Safety Council of Newfoundland; the Nova Scotia Highway Safety Council; the Ontario Safety League; the Prince Edward Island Provincial Safety Council; Saskatchewan Safety Council; the province of Quebec Safety League; and the British Columbia Safety Council.

I indicated that to say that while it was not intended to publish as a document, in draft form, this will be provided in advance of this conference to all these organizations, so that in a sense it will be pretty well published, even though only a draft document. But it was not our intention to publish it, at least in official form, so to speak, until such time as it has been considered by these people who have some specialized knowledge and a particular interest in the matter.

Mr. BELL (*Carleton*): It will be released to them on a confidential basis.

Mr. DRURY: That is correct.

Mr. BELL (*Carleton*): But not for publication? Then my next question would be whether you felt disposed to allow the Committee to have access to it. I assume that in view of your proposal there, that would probably not be your wish at this stage.

Mr. DRURY: It would not seem to fit the plan.

Mr. RYAN: With respect to the human area, Part I of the proposed code, what human factors will be considered by the Committee? What factors are presently being proposed to be incorporated into this code? Are they factors such as alcoholisms, colour blindness, or just what, Mr. Chairman?

Mr. DRURY: I think the two you mentioned are generally regarded as being significant factors in contributing to accidents and undoubtedly these will be looked at and it is one of the reasons why the Institute on Alcoholism has been invited to participate in this. They have specialized knowledge.

Mr. RYAN: Are there other human factors that you are in a position to advise us of at this time that will be considered.

Mr. DRURY: Now, I do not pretend to have any detailed knowledge of this. There are a number of representatives of the medical profession, through the Department of National Health and Welfare, the Medical Research Council, the National Research Council, and the Traffic Injury Research Foundation, who will be there and presumably will bring to bear factors, both physiological and psychological. I will not try to guess at what they all might be. I would frankly be guessing, if I were to do so.

● (10.30 a.m.)

Mr. RYAN: But at the present time your department is not proposing that certain specific factors be considered. You are not putting it before this conference?

Mr. DRURY: Yes, included in the code will be a list of these factors.

Mr. RYAN: Could we have some foreknowledge of that, or is it not permissible at the present time?

Mr. DRURY: In a general way, I do not think there is any secret about this. I have some headings here which I will indicate to you: vision; visual acuity, visual fields; eye muscle imbalance; colour blindness; hearing; heart diseases—that covers quite a lot—diabetes; disease of the respiratory system, mental diseases; and not qualified as a disease, but mental deficiency; epilepsy; disorders affecting muscular control or co-ordination, narcolepsy, whatever that may be.

An hon. MEMBER: A sleeping condition, a tendency to fall asleep easily.

Mr. DRURY: Sleepy, oh. Disease of the muscle and skeleton; alcohol; carbon monoxide; drugs; sedatives and anaesthetics; tranquillizers; stimulants; pain relieving drugs; antihistamines; drugs preventing motion sickness. That is the physiological.

Then there is the psychological heading: Attitudes and driver education; accident proneness; emotional disturbances; fatigue. Then a consideration of medical examinations and the circumstances under which they should be held or not; human engineering, does that mean anything? This term human engineering is relatively new, having come into general use during the second world war; it was applied to the cockpit design of aircraft and based on the concept that the machine is a functional extension of the human operator. Does that give an indication?

Mr. RYAN: That is fine. It is a pretty broad spectrum on it.

Mr. DRURY: The genesis of those headings really came from the traffic Injury Research Foundation, which is a national organization devoted to research in these matters.

Mr. BELL (*Carleton*): Does heart disease include one-arm driving?

Mr. DRURY: I think that comes under the heading of psychological department.

Mr. TRUDEAU: Mr. Chairman, I am inclined to agree with the persuasive approach which was suggested by the Minister, but I wonder if he could tell us how persuasive it is intended that this code become. It would seem to me that if the intention is merely to try and persuade the manufacturers, the effect might tend to be rather slight, because they are strong enough probably to not submit to persuasion as he indicated in the hypothetical case of the three-wheel car, but if you try to persuade through the market forces and persuade the consumers and warn consumers against certain types of vehicles, it would seem to me that the persuasiveness might be more effective. In other words, if you certified certain cars, to use the movie analogy "X" or universal or adult, it has been shown in the movie industry that this is sufficient to keep large flocks of people away from certain types of movies, and it does hit the producer.

Mr. DRURY: It also has the reverse effect, it tends to draw large flocks of people.

Mr. TRUDEAU: Certain people you may know, Mr. Minister, but seriously it has been demonstrated that in the cases of families and people going out in groups, and the universal, and adult and works the way it is intended to work. Never mind the analogy, but in the case of the automobile, it would seem to me that if the persuasiveness were to be effective at all it would have to hit the manufacturer or the distributor in an economic sense, and to do that you would have to frighten away consumers from using certain types of vehicles equipped with certain types of gadgets. I was just wondering if the thinking of the code had gone far enough to permit you to answer this question. Will there be any kind of periodical publication which will say, well this year this car is lousy from such a point of view, and it is dangerous and we suggest you do not buy it?

Mr. DRURY: There has been no thought of, in effect, doing a safety analysis of each car, although this may arise, at some future date, and be done. There will be an endeavour made to argue the virtues of certain safety features so that people when looking around to buy a car will be aware of these and the disadvantages of not having them when they are purchasing.

Mr. TRUDEAU: They will be aware of them if they read the code.

Mr. DRURY: Well, the code to be effective in itself, as a document, will be inadequate. There will have to be some form of popular reproduction of the code itself. I would agree with this.

Mr. TRUDEAU: There has not been too much preparation as of yet, given to this.

Mr. DRURY: No. I just might say that I agree with you that the most effective sanction is an economic one. I personally believe that the easy, simple way to cut passenger and driver injury to about one third of its present level, is to have everybody in the car wear a shoulder harness and seat belts. And you could forget almost all the rest of them. Whether it would be possible to legislate the continuous wearing of these harnesses—they cannot even do it on aircraft. On the aircraft it is persuasive—whether it would be possible to legislate the continuous wearing of these or not, I do not know, and to make it an offence to be in a car not wearing one, I do not know. But there is a possibility that the insurance companies might be able to provide a lower premium or a higher scale of benefit for accidents involving cars where all the occupants are wearing seat belts, as compared to where they are not. This is something the driver understands unless he and his passengers are compelled to wear seat belts they are going to suffer an economic penalty, then perhaps it might be done. But these are all possible avenues.

Mr. TRUDEAU: As I said, I agreed with the persuasive approach as a start, but we could we hear a little more about the compelling approach. We were talking about federal jurisdiction and we did not say much about the Criminal Code powers of the government of Canada and in the event that this legal opinion should not be submitted to the Committee, or in the event that it should not have tackled this aspect of it too much, I would like to ask the Minister a few questions along that line. I realize that his Department is perhaps not the one to have entered into an exhaustive study of the criminal power of the federal government, but could I ask, Mr. Chairman, if in this opinion there has been much thought given to this aspect of it. I think that there is no doubt that the criminal power of the central government can be used to prohibit the use of lethal objects, or the lethal use of non-legal objects, or whatever way you want to put it. I am not sure how effective that could be. Have the legal officers looked at the possibility of defining a car, or certain parts of a car, as liable to cause mischief or death or as being dangerous?

Has there been any analogy made with, for instance, the alcoholics situation when the federal government entered the area of temperance under its federal power? It was alleged that alcoholism had become such a national calamity that this was now under federal jurisdiction, that the federal government could legislate upon it, and it did, and if we, under the analogy, arrive at the conclusion that highway accidents are also reaching the proportions of a calamity, it seems fairly certain that the federal government could legislate in a prohibitive way. Has there been any study given to the kind of prohibitive ways we could use? I am not talking of the human factor here, alcoholism, and so on; I am talking about the lethal object itself.

Mr. DRURY: No. We have not, quite frankly, got this far. The attempt basically being made now is to define the problem. There are a great many ideas around as to what the problem is. But until there is perhaps a little more hard knowledge and a rather more concrete definition of the problem, I do not think it would be wise, and we do not attempt to try and do them, and we are not going, to try to produce solutions.

Mr. TRUDEAU: Well, I agree, until you know exactly what the problem is and what kind of thing causes the mischief, it would be unwise to try and make

the use of such a thing a crime, but as you say the knowledge itself has not reached that point yet. Thank you.

Mr. MATHER: Mr. Chairman, a question somewhat along the same line only in regard to the place of the human factor in this proposed code. I noticed that the Minister included alcohol and its use as part of the human ingredient there. As we know, in the present Criminal Code, there is recognition of the breathalyzer test on a permissive basis in regard to drinking and driving. My question is—and I preface it again, if I may, by stressing what I think is the necessity of getting national action rather than local action on this—Could consideration not be given to amending the Criminal Code, in line with what we hope the safety code will be, to provide a mandatory test for alcoholism in driving? If this were done, I think that you would find, in effect, you would have a national basis, a federal basis, for one part of your proposed safety schedules and codes.

Mr. DRURY: I plead almost complete ignorance on this particular topic, and would hesitate to give any kind of opinion at all. I only know vaguely what a breathalyzer apparatus is. The extent to which it has been proved out as producing conclusive results or not, I do not know. I notice there is some dispute about this. I would certainly want to be a lot better informed on this particular topic before giving an opinion on whether breathalyzer tests should be made mandatory.

Mr. MATHER: Recently, several of the provincial attorneys general have indicated that they want that to be done.

Mr. DRURY: I would hope there would be some discussion of this at the forthcoming conference and perhaps some consensus of opinion reached there.

Mr. HONEY: I have just one question, Mr. Chairman. During your answer, Mr. Minister, to my first question you made a remark with reference to the persuasive effect of public opinion on manufacturers and you referred to, I think your words were, a dramatic event, or at least words to the effect that on one occasion manufacturers had given a great deal of weight to public opinion. I wondered, without giving the details of the manufacturer and so on, but to assist this Committee which has had evidence before it to the effect that manufacturers are pretty difficult to persuade, if you could give us any details of this particular, again without divulging the name of the manufacturer.

Mr. DRURY: There is one motor car which has been described as unsafe, structurally unsafe, for reasons which I do not think the public too clearly understand; so there is as a consequence perhaps an unknown fear of this car, and sales of it have virtually ceased in the United States. Faced with this kind of circumstance, if a manufacturer wishes obviously to manufacture and sell his product and to continue to do this, he is going to take rapid steps to remedy both the defect and the bad impression created. This has been, I think, rather a salutary example of what effect adverse publicity in relation to the essential safety worthiness of a car can do to the manufacturer's business. I think you will find a much greater preoccupation on their part with seeing that this kind of thing does not happen in the future.

Mr. HONEY: You indicated that sales had virtually stopped; is this a recent development in this year's model?

I am not familiar with the car but I am wondering how recent is this development?

Mr. DRURY: Well, the car I heard about—I do not particularly want to name names here—

Mr. HONEY: I think we know the car anyway, but—It is not particularly this year's model, is it?

Mr. DRURY: It is not particularly this model year, no.

(Translation)

Mr. GUAY: I would like to know whether, in the implementation of the Code which you have proposed, it will automatically be necessary to amend the Criminal Code so as to eliminate any possible conflict with the Criminal Code?

Mr. DRURY: As I said earlier, the proposed Code is not issued yet. It just comprises a series of proposals which will be recommended to the public at large, to the manufacturers, to the Provincial Governments and even to the Federal Government. The means or follow-up action depend on the nature of the proposals themselves. There will be some which will perhaps require amendments to the existing rules governing export. There will be other proposals which will require amendments to the rules or regulations or Provincial Governments in the field of cars operating on highways. There will be others that will require amendments to existing legislation on drugs. It all depends on the nature of the proposal, and perhaps there will be amendments required also to the Criminal Code, but at this moment I do not know.

Mr. GUAY: You do not know.

Mr. LATULIPPE: I would like to ask you a question. First of all, I would like to thank you for the wonderful job that you are doing in trying to equip cars with safety devices so that the public can drive safely, but I believe, Mr. Minister, that it will be necessary to make mandatory certain types of construction on these cars, in particular the chassis of these cars, so that they should be designed to absorb shocks, impacts, because it is the impact of a car that is the cause of a great many deaths in the case of faulty construction. In particular, as regards to imported cars, the chassis are very light metal or the frame is absent altogether, and in the case of accidents the people are crushed by the cars themselves, as if they were inside an accordion, while in Canadian cars, the safety level is a bit higher. They absorb a great deal of impact because the chassis is stronger, whereas imported cars, because of the way they are constructed today are certainly not very safe, and even our Canadian cars should have more safety devices, in particular to absorb impact. In any case I think we need some strengthening. For instance, let us look at the hard-top cars. People can be crushed by the top if it is not sufficiently strong, so I think it would be necessary for the Code to stipulate that certain safety devices should be fitted. We should certainly strengthen the structure of the cars and certain parts of the cars so as to give them great shock absorbency, in any event.

Mr. DRURY: Can I ask you a question, should we prohibit the driving of cars without any tops whatsoever?

Mr. LATULIPPE: Not only should we prohibit that but we should also endeavour to give them a greater number of safety devices or to strengthen the top.

Mr. DRURY: I am thinking of completely convertible cars which have no hard-top whatsoever. Should we prohibit the existence of those cars?

Mr. LATULIPPE: As regards to safety, frankly I do not know.

Mr. DRURY: I would like to have your advice, should we prohibit them altogether?

Mr. LATULIPPE: Perhaps, because for citizens who want to have certain high safety levels, something will have to be done if we are going to let the manufacturers go ahead and build convertible cars. People are killed in those cars, because the cars are not sufficiently strong, there may be some other devices. A car may be convertible but they may put in some other type of safety device. I do not know. Maybe they can put in some other safety device, maybe they can get organized and improve the situation.

(English)

The CHAIRMAN: If there are no more questions, then, Mr. Minister, on behalf of the Committee I would like to thank you very, very sincerely for your presence here this morning, for the presentation and information you have supplied us with, and also for bringing your Assistant deputy and his associate with you. We know the information that you have given us will be very valuable when the Committee is considering its report.

With reference to the legal opinion, if after consultation with your officers and the Department of Justice you feel you can release it, I think you can release it on the basis that it will be treated in confidence by the members of the Committee, at any rate. Thank you very much indeed.

Mr. DRURY: Thank you, Mr. Chairman. I am grateful to the Committee for the interest they are taking in this problem which is really a serious one. The more people who do take an interest and are helpful like the Committee, the more grateful we are.

The CHAIRMAN: Thank you very much.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 8

TUESDAY, JUNE 7, 1966

Respecting the subject-matter of

- Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).
Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).
Bill C-87, An Act to amend the Criminal Code (Impaired Driving).
Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles), and
Private Members' Notices of Motions Numbers 26 and 31.
-

WITNESSES:

From the Canadian Highway Safety Council: Mr. R. M. Anthony, Chairman, Laws and Enforcements Committee; Dr. Ward Smith, and Mr. W. F. Bowker.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Honey,	Mr. Ryan,
Mr. Asselin (<i>Charlevoix</i>),	Mr. Laflamme,	Mr. Scott (<i>Danforth</i>),
Mr. Bell (<i>Carleton</i>),	Mr. Latulippe,	Mr. Tolmie,
Mr. Choquette,	Mr. MacEwan,	Mr. Trudeau,
Mr. Chrétien,	Mr. Mather,	Mr. Wahn,
Mr. Fulton,	Mr. McQuaid,	Mr. Woolliams—(24).
Mr. Goyer,	Mr. Nielsen,	
Mr. Guay,	Mr. Otto,	

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

MONDAY, May 30, 1966.

Ordered,—That the subject-matter of Bill C-176, An Act to amend the Criminal Code (Insanity at time of trial), be referred to the Standing Committee on Justice and Legal Affairs.

Ordered,—That the subject-matter of Private Members' Notice of Motion Number 38, the question of automobile safety, be referred to the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, June 7, 1966.

(9)

The Standing Committee on Justice and Legal Affairs met this day at 9:45 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Bell (*Carleton*), Cameron (*High Park*), Chrétien, Honey, Mather, McQuaid, Ryan, Scott (*Danforth*), Tolmie, Trudeau, Wahn (12).

In attendance: From *The Canadian Highway Safety Council*: Mr. R. M. Anthony, Chairman of the Laws and Enforcement Committee; Dr. Ward Smith, and Mr. W. F. Bowker, Dean of Law, University of Alberta (Edmonton).

The Chairman introduced the witnesses, and invited them to make a statement with reference to the subject-matter of Bill C-87.

Mr. R. M. Anthony made a statement to the Committee.

Agreed,—That the following be filed with the Committee as exhibits: Breath Tests for Alcohol (Exhibit 4); The Development of a Large Scale Breath Testing Programme in Ontario (Exhibit 5); Use of the Breathalyzer in Ontario—1965 (Exhibit 6); Alcohol Detector Tube of R. F. Borkenstein (Exhibit 7); Drinking and Driving (Exhibit 8); The Drinking Driver, Report of a Special Committee of The British Medical Association (Exhibit 9).

Mr. W. F. Bowker made a statement.

At 11:00 a.m., the statement of Mr. Bowker continuing, the Chairman adjourned the meeting until 4:00 p.m. this day.

AFTERNOON SITTING

(10)

The Standing Committee on Justice and Legal Affairs reconvened this day at 4:07 p.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Forest, Goyer, Guay, Laflamme, Mather, McQuaid, Ryan, Scott (*Danforth*), Tolmie, Trudeau (12).

Also present: Mr. Stanbury, M.P.

In attendance: (Same as at morning sitting).

The Chairman invited Mr. W. F. Bowker to resume making his statement.

At the completion of Mr. Bowker's statement, the Committee proceeded to the questioning of Messrs. Bowker, Smith and Anthony.

At the completion of the questioning, the Chairman thanked the witnesses for their valuable contribution.

At 5:05 p.m., the Chairman adjourned the meeting to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, June 7, 1966.

● (9.45 a.m.)

The CHAIRMAN: Gentlemen, we have a quorum. I understand that Mr. Honey has a motion he would like to make at this time.

Mr. HONEY: Yes, Mr. Chairman, I would like to move that reasonable living and travelling expenses be paid to Mr. R. M. Anthony appearing before this Committee in accordance with the scale of expenses approved by Mr. Speaker.

Mr. TOLMIE: I second the motion.

Motion agreed to.

The CHAIRMAN: I have the pleasure, gentlemen, of introducing our witnesses for today: Mr. R. M. Anthony, Crown Solicitor in charge of prosecutions for the province of Alberta; Dr. Ward Smith who will be speaking on behalf of the Canadian Highway Safety Council and is, of course, associated with the Department of Justice of the province of Ontario, and Mr. W. F. Bowker, Dean of Law, the University of Alberta. We have these three distinguished gentlemen with us. I am first going to call upon Mr. Anthony. The subject matter of the bill which we are considering, is impaired driving. A suggestion made by Mr. Mather in the bill is that there be no longer an offence of intoxication but that if you are impaired to a certain degree as shown by means of a breathalyzer test then you will be deemed to be a person driving while impaired, and if you refuse to take such a test then you could be prosecuted for having failed to take the test.

Mr. R. M. ANTHONY (*Chairman, Laws and Enforcement Committee, Canadian Highway Safety Council*): Mr. Chairman, honourable members of Parliament, this submission is on behalf of the Canadian Highway Safety Council and I am making the submission in my capacity as Chairman of the Laws and Enforcement Committee of that council. I intend to deal with a historical review of the provisions of the Criminal Code and to show the need for a change in legislation as proposed in Bill C-87.

The provisions making it a criminal offence for "a man in any degree of intoxication that affects his perfect carefulness in undertaking to run a motor car" first appeared in the Criminal Code of Canada in the year 1921. This section then provided that "everyone who, while intoxicated drives any motor vehicle or automobile" is guilty of an offence punishable upon summary conviction.

The original offence section was updated by a revision in 1925 Statutes of Canada, Chapter 38 Section 5 which included intoxication by use of narcotics as well as a provision making it an offence to have care and control of a motor vehicle while in that state of intoxication.

Further revisions followed in 1930 Statutes of Canada, Chapter 11, Section 6 and 1935 Statutes of Canada, Chapter 56, Section 4 and again in 1947 Statutes of Canada, Chapter 55, Section 10. Each amendment or reenactment further refined this offence to include broader concepts of intoxication in the use of the motor vehicle, but none of the revisions attempted to assist the courts by defining what was meant by intoxication or what degrees of intoxication were to be included in this offence.

Throughout the period of time since the enactment of this legislation the courts have had to contend with the problem of interpreting the intention of Parliament when considering what was meant by intoxication. Examples of these attempted definitions can be cited in the following reported decisions:

McRae v. McLaughlin Motor Car Company (1926) 1 D.L.R. 372: This is an Alberta case, a civil case, but it involved the interpretation of intoxication. Mr. Justice Boyle in that case stated and I quote:

"Intoxication, it must be remembered, is a mental and physical condition caused by the consumption of alcohol in some form or another. Some people believe that a man who takes any alcohol thereby becomes intoxicated. In my opinion, the degree of intoxication contemplated by Parliament in enacting section 285(c), as contained in the old Criminal Code, is a state of intoxication during which, if permitted to drive a motor vehicle, it would be dangerous to the public."

Another case is *Giddings v. R.* (1947), 89 C.C.C. 346. Chief Justice Campbell of Prince Edward Island Supreme Court stated:

"Since its passing in 1921, the provisions of the Criminal Code, section 285(4)...regarding intoxicated driving has received very little reported interpretation. Appellant's counsel cited a group of cases which adopted the definition of intoxication as 'a state of intoxication during which, if permitted to drive a motor car, it would be a danger to the public.' This definition was used by Mr. Justice Boyle, in an Alberta civil case—*McRae v. McLaughlin Motor Car Company*, *Supra*,—and is no doubt correctly stated and correctly applied to the facts of that case...I do not consider that Parliament in using the word 'intoxicated' simpliciter, intended it to be refined into degrees, or intended that only an advanced state of alcoholic inebriation would constitute an offence. 'Under the influence of liquor' in any ordinary language means under the intoxicating influence of an intoxicating liquor. Not only the drunk is a menace on the highway. It is common knowledge that even mild intoxication has the effect of relaxing normal caution and inducing the taking of chances, while judgment of speed and distance are impaired and reactions to situations are retarded.

It therefore seems clear to me that a driver who is in any degree under the influence of liquor comes within the definition of Mr. Justice Boyle, as being a potential danger to the public...The question appears

not to be what degree of intoxication is proved, but what proof is required of any degree of intoxication."

The last case I would quote to you is the case of *Desbiens v. R.* (1951), 103 C. C. C., page 36, where the Quebec Supreme Court stated:

"Intoxication is the stupefied condition of a person who has imbibed alcoholic liquor in sufficient quantity to make him lose totally or partially the use of his mental or nervous faculties. To be intoxicated in the legal sense, it is not necessary to be dead drunk any more than to be ill it is necessary to be dying. It suffices that an individual be affected by alcohol to the point of no longer having his normal control, his judgment, or, in a word, that he no longer has the use of all his intellectual or physical faculties."

From the progression of the cases which have cited it becomes apparent that the courts by interpretation have placed a heavier burden upon the Crown when attempting to establish intoxication in the use of a motor vehicle. It thus became necessary for Parliament to enact new legislation to cover the lesser degrees of intoxication excluded by the then recent court decisions which narrowed down the scope of the original legislation to a point where it affected only those who were no longer in control of their intellectual or physical faculties.

Therefore, Section 285(4A) of the old Code was enacted by the Statutes of Canada 1951, Chapter 47, which created the offence of operating a motor vehicle while a person's ability to operate the said motor vehicle was impaired by alcohol or a drug. From this time on the courts and those charged with the responsibility of the enforcement of our laws have had to contend with two offences relating to the operation of a motor vehicle under the influence of alcohol or a drug. Some may say that this clarified the law in that it clearly established two levels of impairment or intoxication, which constituted offences under the Criminal Code; this assumption, however, is far from being correct because now there were two degrees of impairment or intoxication neither of which had been defined by Parliament.

The result in effect has been to almost nullify any prosecutions under the existing section 222 of the Criminal Code, revised 1955, unless the person so charged was found to be in a state where he had no control over his faculties and in most cases unable to even walk or talk, let alone drive a motor vehicle. Short of this deteriorated condition, the courts were reluctant to convict partly because of the mandatory jail sentence of seven days for a first offence; and in the alternative chose to convict the accused of the lesser charge of impaired driving which is an included offence, even though the person may have been in a state where, if found in a public place, would have warranted a charge of drunkenness under the Criminal Code but not relating to the operation of a motor vehicle.

This means, therefore, that the intent of the original legislation is not being carried out by the courts in either charges under section 222 which is for intoxicated driving or section 223 which is the section dealing with impaired driving. To obtain convictions for an offence under section 223, it must be clearly established by physical examination alone that an accused was so impaired by alcohol or a drug that he was incapable of operating a motor

vehicle safely having regard to the condition and other users of the road, and not so much merely that his ability was impaired, which is all that the law has really required.

What is the cause of the difficulty encountered by the courts in carrying out the intended meaning of the provisions of the Criminal Code? They are many and varied, but to list a few of the important considerations, one would have to consider:

- A. That the court is often not made aware of the actual amount of alcohol consumed by an accused.
- B. That the accused may have many valid pathological defences by way of explanation of his physical appearance, which at present is the usual means of judging his sobriety or impairment, such as
 - 1. Over-tiredness;
 - 2. A mild sedative reacting with alcohol;
 - 3. Physical disabilities;
 - 4. A lack of balance;
 - 5. Possible carbon monoxide;
 - 6. Hay fever or other allergies;
 - 7. Metabolism disorders;
 - 8. Neurological disorders.
- C. Further, the court is not always provided with an accurate description of the accused's appearance at the time of his arrest, due to the inability of the Crown's witnesses to accurately relate their clinical observations.
- D. And further the accused may not show the usual outward clinical symptoms found in impaired cases, but may nevertheless be adversely affected by the consumption of liquor.

All of which goes to show the rather inexpedient methods presently in use in presenting evidence to a court of law in support of a charge which relates to an accused's physiological condition at a time of operation of a motor vehicle. It is not too difficult, therefore, to see why the court is unable to carry out in any exacting manner the responsibility assigned to it in considering the guilt or innocence of a person charged under either section 222 or section 223 of the Criminal Code. It is also apparent where the courts at present only convict the more serious cases of impaired or intoxicated driving where there is a gross amount of evidence available to support the charge and thereby remove the likelihood of any reasonable doubt which may be raised by an accused at trial by way of the aforementioned pathological defences.

A summation of the foregoing would lead to the conclusion that there presently exists incontrovertible problems with regard to the current legislation governing intoxicated and impaired driving offences under the Criminal Code of Canada, and these problems can be cited as follows:

- 1. There is no precise definition of what is meant by "intoxication" under section 222 of the Criminal Code of Canada.
- 2. There is no precise definition of what is meant by the term "impaired" under section 223 of the Criminal Code.

3. There is no element of distinction by degrees or otherwise of the difference between the state of intoxication or impairment.
4. There is no means by which evidence can be adduced before a court of law in every case of the actual physiological condition of the accused at the time of his offence, other than by straight physical observation, even though the terms imply that the court must arrive at a conclusion about the accused's physiological condition before pronouncing guilt.

Having once set out the problems and their causes what, therefore, are the best solutions available to resolve these problems? A change in legislation is required to remove the distinction created between the existing offences of impaired and intoxicated driving, either by defining what is meant by those terms in a way which can be measured and tested in a court of law or, in the alternative, by removing the distinction in creating one offence which will encompass all degrees of impairment by alcohol or a drug, and to define the scope of the offence. When the law is attempting to deal with a person's physiological state at a specified time, and when there exists a means of accurately measuring that state by a scientific instrument, then provisions should be made to assist the court in its determination of the offence by making available to the court in every instance a measurement of that physiological state (blood alcohol level) taken at the time of the offence.

When consideration is being given to a chemical test as an included provision in the law, the convenience of a suspected offender must be taken into consideration. Thus tests requiring the use of medical personnel or involving an invasion of privacy (urine test) should be considered as secondary to a chemical test which can be performed with a limited inconvenience and one which will produce a similarly accurate result. In this regard, reference should therefore be made to the use of breath testing as a means of accurately measuring the level of blood alcohol prevailing at the time of an offence.

Blood alcohol testing can of course be performed in three ways; by testing either the urine, the blood, or the breath, all of which have been accepted by the courts as accurate means of measuring the physiological condition of an accused. In fact provision is made for their admissibility under the existing section 224 of the Criminal Code. At present, however, the frequency with which such tests are being made available to the courts are too few to be considered as being of much assistance in the overall picture, since it requires a voluntary act on the part of an accused before such tests may be taken and produced as evidence. Of these three accepted methods of chemical analysis, the breath analysis is by far the most widely used and accepted method of supplying this information to the courts.

● (10.00 a.m.)

Instruments designed to measure blood alcohol level by analysis of the breath have been researched and developed since the early 1950's and it is now at a point where it enjoys a high coefficient of reliability and validity when compared to any of the other means of testing for this same result. Research in the use of breath testing instruments has been carried out by many of the

reliable medical research and university institutions. I would refer you to the

Report of Special Committee of the British Medical Association of 1965 and a report of Doctor H. Ward Smith, who is here today on Breath Tests for Alcohol.

Legislation incorporating an implied consent on the part of a motor vehicle operator to partake in the supplying of a sample of breath to a police officer upon request has been passed by the Provinces of Saskatchewan, New Brunswick, Alberta, and British Columbia, and such legislation is being actively considered for inclusion by at least three other provincial governments.

There are many reported decisions from the Canadian Courts where the evidence of such tests of breath for blood alcohol concentrations have been admitted as valid evidence, tending to show a specified level of blood alcohol. I would refer you to the decision of *Regina v. McLean*, 1957, Supreme Court of Ontario, and I would also refer you to the Reference Under The Constitutional Questions Act Re Section 92(4) of The Vehicles Act, 1957 (Sask.), c. 93 which was an appeal to the Supreme Court of Canada as to the validity of the legislation which was passed in Saskatchewan in 1959.

Mr. SCOTT (*Danforth*): What was that legislation, very briefly?

Mr. ANTHONY: It is an implied consent legislation which states that the driver of a motor vehicle in Saskatchewan must submit a sample of his breath to a police officer upon request; failure to do so could result in suspension of his licence. It is an implied condition on the granting of a licence. This is the way in which it was brought forth and this is the way the Supreme Court has accepted it as valid legislation *intra vires* the province in that it did not enter into the criminal field of the provisions of the Criminal Code.

Mr. SCOTT (*Danforth*): Do the motorists in Saskatchewan, at the time they take out their licence, sign anything indicating consent to this arrangement?

Mr. ANTHONY: No. It is a rule included in the rules of the road, much the same as a person does not sign any consent form that he will not speed or that he will not do any careless driving. This is also a requirement of their legislation that he will do this. Instead of a "will not" provision it is a "will" provision.

Breathalyzers and breath testing is not peculiar to Canada, however, since in the United States there are over forty states in which chemical test legislation has been enacted with fifteen states having in addition to that legislation an implied consent type of legislation; four of which have also included legislation establishing the presumptive level of blood alcohol to be 10 per cent. As a result of this a person is presumed to be guilty of an offence if there is evidence of at least that percentage of blood alcohol in the system at the time of his arrest.

The need for an improved procedure to enforce the laws relating to the abuses of alcohol and drugs in conjunction with the operation of a motor vehicle becomes most apparent when considering the overall traffic accident picture in Canada by comparing it to the United States who are acknowledged as having one of the worst motor vehicle accident and fatality records in the world. Last year, 1965, there were 4,879 traffic deaths in Canada for approximately 20 million population; whereas in

the United States there were approximately 49,000 traffic deaths for 200 million population. Therefore, proportionately by population Canada's traffic fatality record is every bit as bad as that of the United States. Conservative estimates have been made by such authoritative bodies as the National Safety Council and other informed groups which indicate that in approximately 45 per cent of all fatal traffic accidents the drivers had consumed alcohol within a few hours before the accident. Some figures quote higher percentages, but it depends upon the areas under study, as this figure will increase in metropolitan districts. Armed with this information and the concern that should be shown for these alarming figures, it would be logical to assume that some better means of enforcement of the law is required to prevent further statistical increases in the fatality and accident rates, and that such improvements must be designed to permit easier detection of these offences by the law enforcement agencies in order to bring these people before the courts. Again, harkening back to the previous proposed alternatives, chemical breath testing analysis would lend much support to the sought-after solution of improving our existing enforcement techniques.

Should chemical analysis of the breath be made a compulsory requirement of the law? The answer to this is yes! The reasons for this requirement are rather obvious when consideration is given to the circumstances in which such tests are required, and to the need for uniformity of enforcement of our laws. In the Province of Ontario at present a voluntary breath testing program has been under way since 1956 and the records will show that when this system was first put into operation approximately 94 per cent of those requested to supply a sample of breath complied. However, with the passing of time, and as people become more experienced in the use of this machine from prior encounters with it, the rate of refusal has increased to a point where now approximately only 74 per cent of those requested will supply a sample of breath voluntarily. What about the other 30 per cent? Why should they be permitted to escape a system of efficient enforcement of the law by refusing to voluntarily submit to a breath test, especially when one considers that a great proportion of that 30 per cent are repeated offenders and comprise the hard core of our current enforcement problems. It is almost a certainty that an operator of a motor vehicle who is involved in a serious motor vehicle accident where death or injuries resulted, and who is suspected of being either impaired or intoxicated, will not voluntarily submit to a sample of his breath. This is especially true when he knows that not only might he stand liable for prosecution of an offence relating to section 222 or section 223 of the Criminal Code but also that he may be held accountable for the consequences of his actions relating to the operation of his motor vehicle and the death or injuries which followed. Therefore the principle behind the operation of the voluntary chemical test situation does not hold up in practice when it permits the serious offenders and the repeaters to escape detection by refusing to submit to a voluntary test, when more law abiding citizen may, out of sheer respect for the law and our judicial system submit to a test voluntarily, which could result in his or her conviction. This situation cannot help but create contempt for our laws in the minds of

the citizens of this country if such inequitable enforcement techniques are permitted to exist without some change.

Would compulsory breath testing legislation create a hardship or impose any fetters upon our basic freedoms and human rights? I would submit to you the answer is no! No more than does existing legislation that is designed to effectively deal with any similar problems of enforcement. Examples of similar obligatory requirements being placed upon the public can be found in The Customs and Immigration Act, The Identification of Criminals Act, the powers of arrest provided for under the Criminal Code, the powers of search and seizure provided for under the Criminal Code, and many other federal and provincial acts which provide for outright confiscation of property before the matter is even brought to trial. However, one must remember that a person is not convicted upon the evidence of breath analysis alone, nor is he convicted without a trial, at which time he may present a defence and cross-examine the Crown's evidence. This evidence cannot be equated to a confession of guilt as has been suggested by some of the opponents to this proposed form of legislation, as this more closely resembles the type of evidence obtained by a physical search, in that it does not involve a human relationship factor (such as the interviewing police officer and an accused in the obtaining of a statement for admission) but results in the obtaining of physical evidence which may or may not have a property which may produce evidence of the offence. It is much like taking an ash tray from the scene of a crime and searching the ash tray for fingerprints which may indicate the presence or lack of presence of the accused at the scene. The property taken, the breath, may or may not indicate the offence but it is a physical property we are looking for and not a mental admission.

In deciding whether Parliament is justified in requiring breath tests to be compulsory, we must weight the imposition upon the individual against the evil that we are trying to suppress. The taking of a breath test does not involve even the slightest intrusion on the bodily integrity of an accused, and surely Parliament is entitled to require that a person may not drive with a specified amount of alcohol in his blood; and that the dice should not be loaded in favour of the law breaker by allowing a suspected offender to invoke human dignity as a basis for defying our laws with impunity.

In conclusion, it is therefore respectfully submitted on behalf of the Canadian Highway Safety Council that the proposed amendments as contained in Bill C-87 be adopted as much-needed legislation to assist in controlling the offences related to the use of alcohol or a drug in conjunction of the operation of a motor vehicle. In particular, the Canadian Highway Safety Council goes on record as endorsing the principles heretofore enunciated, but with specific reference to the following needs:

1. Clarification for existing legislation contained in section 222 and section 223 of the Criminal Code to remove the distinction created, or to clarify those distinctions by concise, workable definitions of the existing terminology.
2. The enactment of compulsory breath testing legislation to assist in the enforcement of these offences to better assist the courts in arriving

at a conclusion in pronouncing the guilt or innocence as the evidence may apply to the offence.

3. The retention of provision providing for the admissibility of voluntary chemical tests of blood and urine as an alternative to breath tests, where such test cannot be administered, and in cases where the offence may relate to the use of drugs in conjunction with the operation of a motor vehicle. It should be noted here that chemical breath testing does not indicate the presence of drugs in the system of the accused.
4. The retention of provisions making it an offence to have care and control of a motor vehicle while ability to operate the said motor vehicle is impaired by alcohol or a drug.
5. The establishment of an arbitrary level of blood alcohol concentration which would be presumptive evidence of an offence without suggesting what level that might be.

All of which is respectfully submitted to this Committee by the Canadian Highway Safety Council.

The CHAIRMAN: Thank you very much, Mr. Anthony, for your very interesting and very instructive statement. Now, the usual custom here is to allow questions to be asked and, with your permission, we will do that.

Mr. AIKEN: Mr. Chairman, on a matter of procedure, since the witnesses today are all on approximately the same ground, I wonder if it would be more convenient if we heard the witnesses first and then proceeded with questioning. Then we would not find at the end of the meeting we have not heard from some of them. If we proceed to hear the witnesses we might then continue with the questioning.

Mr. SCOTT (*Danforth*): Mr. Anthony seems to have dealt with a specific area, that is, sort of a statistical breakdown. I gather Dr. Smith will go into the chemistry of the test which we are very interested in, but we might be leaping back and forth from witness to witness.

The CHAIRMAN: I would suggest, maybe as a compromise, that we try and concentrate the questions on specific matters dealt with by Mr. Anthony and not wander too widely away from what he has stated. Then we will call on Professor Smith followed by Dean Bowker from Alberta, if that meets with your approval. Is that satisfactory to you, Mr. Aiken.

Mr. AIKEN: I am on another committee that meets at 11 o'clock.

The CHAIRMAN: We have until 11 o'clock and I know we have a lot to be done. We also have the right to sit this afternoon. We have the permission of the House to do so. We can continue on later this afternoon if that is necessary.

Mr. TRUDEAU: I want to say I agree with Mr. Aiken that we will not hear all the witnesses this morning if we start cross-examining each one in turn.

The CHAIRMAN: I am quite sure that is the case. What is the consensus? Would you prefer we call the other witnesses?

An hon. MEMBER: I think we should hear the other witness, Mr. Chairman.

Mr. SCOTT (*Danforth*): Mr. Chairman if we do not get to the questioning is the Committee prepared to sit this afternoon so we can cross-examine the witnesses?

The CHAIRMAN: Is that agreed?

Mr. SCOTT (*Danforth*): I do not care as long as we get a chance to question them.

Some hon. MEMBERS: Agreed.

Dr. WARD SMITH (*Canadian Highway Safety Council*): Thank you very much, Mr. Chairman and gentlemen. I feel that the broad picture of these sections as proposed does credit to the draft of this bill. I feel that it has been long needed in this country. At the present time the reasons outlined by Mr. Anthony show that there is an uneven administration of justice. We have used the breathalyzer test in Ontario since 1965 and, as he has indicated, the refusal rate has steadily increased. There is one point on their use that has not been brought out. Many of these people brought in for testing have not had sufficient alcohol in their system to support the charge that is already laid. The procedure has been to lay a charge, bring the person in and request a breath test. About ten per cent of those people who have provided the test have not had sufficient alcohol in their system to support subsequent action. These have either been sent home, charged with speeding or whatever other thing they were doing.

A few of these, however, have been found to be ill or under the influence of drugs. Those people, where there has been a disparity between their obvious physical condition and the alcohol level, have been taken to a physician for further examination. In many of these cases they have been found to be sick and in a few cases under the influence of drugs. I take it that in this bill we are also dealing with the whole question of the use of drugs by the motorist and some kind of procedure such as this is the way to get at this question of drugs. For this we need something more than breath tests because the drugs do not enter into the breath but can only be detected through samples of usually urine because we need larger samples than can be obtained in an ordinary blood sample.

I have the results here of last year's testing using the breathalyzer in detailed fashion. There were almost 12,000 interviews with 3,000 refusals, which is approximately 27 per cent, leaving 8,500 tests. In 765, which were 9 per cent of the tests, there was no charge because the alcohol level was too low; there were 20 in which there was no charge due to injury or other condition of the driver, and the others were charged under sections 223 and 222. Sixty four hundred were charged under 223 and about 900 under 222 and the others under other charges. This is the summary of a whole set of results from the province in the last year.

This program has been in progress since 1956 and the controls on the procedures used, the training of the officers to conduct these tests, have been very carefully worked out and have been subject to extensive cross-examination over the course of time. Mr. Lucas and I wrote up the general findings about this in a booklet called *Breath Tests for Alcohol* which is reprinted from the *Criminal Law Quarterly* and any of the details of the breath tests, its use and theory can be obtained from that article. I have copies of this here if any of you care to have it.

An hon. MEMBER: It would be most helpful, Mr. Chairman, if it were distributed.

The CHAIRMAN: Yes.

Mr. SMITH: I do not know if I have sufficient copies for all. Also, here is a second article which I presented at the Third International Conference on Alcohol and Road Traffic in London in 1962, which is a publication describing some thing of the controls that we have employed in these tests in Ontario; something by way of suggestions for the operation of the entire breath testing program because I feel that if we are considering this sort of thing then the question of control of the analysis and the persons responsible for it become a very important consideration. No doubt it does not need to be outlined in the law but it certainly becomes regulations for the handling of these affairs in each of the provinces that are charged with the administration of this law. The things have been in the scientific literature, available for people to question and examine, and I assure you that I myself have been cross-examined many times on the basis of these articles in court. However, I have felt it has been a very useful thing to, as it were, lay the cards on the table, so that it provides a basis, in properly done tests, which will be readily recognized by the lawyer.

I feel that this bill provides an answer to a real need in the country for the reasons outlined by Mr. Anthony. In contact with the scientists in the various associations, the National Safety Council and the International Committee on Alcohol and Road Traffic with which I have been associated for the past 16 years, there is general agreement on the facts of the matter with respect to interpretation of the levels which indicate impairment. There is one notable exception to this but he has been fully answered in our courts. The latest most authoritative opinion is that of the special committee of the British Medical Association expressed in their report of 1965. I do not know if you gentlemen have had access to this report but it is very revealing, bearing very closely on the basis for this bill and I have taken the liberty of also bringing a number of copies of it which you might care to review because it summarizes much of the recent scientific studies in the area and applies the experience of a group who in 1954 were not well versed at all in this problem. It shows an interest as a result of much of the research which has been conducted in England where they have accepted other researches that have been done.

The Canadian Medical Association, as you have already heard, the Ontario Medical Association and the American Medical Association all have made statements about the interpretation of chemical tests indicating that at .1 per cent, a driver is impaired regardless of these questions of tolerance.

In the last ten years there has been many scientific studies which support this thesis and it has become apparent that the best way to enforce impaired driving legislation is through the use of these chemical tests. It has been brought out by Mr. Anthony that the traditional evidence that we have been dealing with has been that of the physical behaviour of the motorist. I would like to refer to excerpts from this 1965 report of the British Medical Association. These excerpts may be in conflict with some of the generally held views which have received the widest of publicity in the press because these things are what many people like to hear; but these views are in conflict with this and I would like to, first of all, quote from the conclusions on the question of the relationship between the physical behaviour of the person and the chemical tests. In conclusion (1) they state and they are speaking about the general physical

examination of the person and whether this is conducted by a medical person or by a police officer:

The examination is neither sufficiently sensitive nor reliable enough to detect other than gross impairment of driving ability due to alcohol or other drugs.

In conclusion (2) they go on to say:

We recommend that evidence based on such an examination should not be given to the court for the purpose of determining whether the ability to drive properly was impaired by reason of the suspect having taken alcohol, and that it should be used solely to help the court to decide whether the suspect's behaviour was due to any other factor, such as illness or injury.

Conclusion (4):

We believe that analysis of the concentration of alcohol in the body affords the best available scientific evidence of impairment of the ability to drive properly due to alcohol and we recommend that it be made an offence for a person with a blood alcohol concentration in excess of 80 mg. solidus 100 mi.

which translated into the terms to which we are more accustomed means .08 per cent or .8 parts per thousand—parts per thousand meaning weight of alcohol per unit volume of blood.

Conclusion (5):

We recommend that the courts should have regard primarily to the concentration of alcohol in the body and that they should no longer rely on the results of clinical examination in determining whether or not the ability to drive properly is impaired by reason of the suspect having taken alcohol.

In the same booklet there are a number of other citations which I will not trouble you with now but these are to be found on page 8, conclusions (5) and (9); on page 9, the last paragraph; on page 10 there are three items bearing on this same point; on page 14, at the bottom of the page; page 16, at the top of the page; page 25, the last sentence and page 27 in the long paragraph of explanations at the top of the page.

All of these quotations indicate that the way to deal with this problem is through the chemical tests. It remains then for a discussion of the accuracy of these tests. Dealing with the general problem and the literature up to 1960, this has also been available to the lawyers in an article entitled *Drinking and Driving* which is also presented in the *Criminal Law Quarterly* and this has been available to them for examination and cross-examination for the last three or four years. If anyone would care to look at some of the previous literature and studies bearing on this point up to 1962, I have copies available.

Dealing with the details of the breathalyzer itself, that article has been distributed and in there is indicated the precision of the breathalyzer. Its details have been available for cross-examination since that time. Mr. Lucas is here with me; he has brought a breathalyzer which you see on the end table to his left. If it is requested and desirable this can be demonstrated later on. I have

also had the opportunity of reviewing the available chemical methods for determining alcohol and have prepared a chapter dealing with this topic which has been published in a recent book called "Methods of Forensic Science," volume 4, and this deals with the methods for determining alcohol in the blood, urine, breath and the available methods up to 1965.

● (10.30 a.m.)

This is the sort of background approach I have brought to this problem, attempting to present in the literature for examination the various facets of the problem. We are dealing with many of these tests now in the province of Ontario and have been somewhat hampered by the voluntary provisions of the present law as applied.

There are one or two comments, if I might have the temerity to offer these, on the detail in Bill C-87, as presented. One is that there is unanimity of opinion on the question of .1 per cent as implying or meaning impairment in a driver. This has been determined from actual tests of driving where we have put drivers into motor vehicles and had them drive, and so on. The question of .08 per cent is not quite clear as yet from our scientific studies. One has to appreciate, however, that in our tests and studies we are actually measuring driving performance and one would agree that ability must be impaired to a very marked degree before we can obtain a measure of performance. So I would feel that .08 per cent might well be the level at which impairment of ability is present in all drivers studied but, as yet, our scientific tests uniformly do not indicate this of themselves. They are, in fact, dealing with various aspects of performance. One aspect which we have not been able to test is the attitude of the driver which is probably one of the most important facets of his driving ability and performance.

Secondly, with regard to section 22, sub-section (2), it is intended that this level or whatever is settled upon become conclusive evidence. I think that since we are saying that the person is impaired, then we must deal with the variation that is possible. Our most recent tests do not detect a lower limit which indicates lack of impairment in some susceptible people—that is at the level of .01, .02 per cent at which some very susceptible people have shown to be impaired. When we get to the more resistant people, those who have a high tolerance to alcohol, those who habitually drink one to two bottles of whisky a day, we are able then to show impairment at levels of .1 per cent, and there is a range of human variation. Now, with this kind of variation which has been studied for many drugs, and alcohol is not unusual in this respect, we are stuck with the biological fact that we can only predict variation within certain degrees of certainty. In this field we feel that with a level of .1 per cent there is not any reasonable doubt of a person being impaired at this level or higher, the degree of certainty that is greater than what is ordinarily considered a medical certainty, the degree of certainty that approaches a scientific certainty as high as we could possibly expect when dealing with people. But I do not think that one could say that it was absolute because we are dealing with biological phenomena.

I am a bit disturbed about the "venous blood" reference here. Section 222(2) refers to an alcohol level in venous blood of a person. I think we should realize that when we are using the breath test we are actually dealing with blood that

is going through the lungs and this is essentially arterial blood. Now the difference is this; on page 28 of the same booklet, *The Drinking Driver*, of this report of the Committee of the British Medical Association—and I have seized on this one because it answers so many of the problems that come up in this whole discussion—it says, because the breath reflects arterial blood:

Analysis of the breath is, therefore, preferable to the analysis of venous blood since it estimates the alcohol concentration in the pulmonary circulation which is a more accurate index of the concentration of alcohol in the brain during the period when the concentration is rising.

That is, during the early stage after drinking there is a possibility of a difference in concentration in the alcohol being delivered to the brain as opposed to that coming back from the tissues which is the sample that is obtained in venous blood. At that time the breath tests give a more accurate index of the effect of alcohol on the person than even if you took a sample from the vein. I think we should appreciate that we are dealing with that kind of blood and scientifically, with all due respect for the word "venous" there when referring to blood, it does not make good biochemical or physiological sense.

I am disturbed also about the references here to "a sample of breath". I believe this brings up a point that has been touched on before and that has to do with the precision with which you can conduct any analysis. There is always a margin of variation in analysis and, no doubt, under regulations or whatever methods are used in the various provincial jurisdictions, the people in charge of the programs will allow for the known variation in the methods as employed by the people who are conducting these tests. But the only way that one can get at this question of variation is through a duplicate sampling. Anywhere in chemical work one needs to do at least two analyses, one to verify the other. If there is not verification then there is the possibility there is something here that is not quite controlled in the analysis and this leads the analyst then to search for the reason for variation.

I feel that if we are going to put this much emphasis on an analytical result, then we need to have at least two analyses, one to verify the other and if they do not verify each other within a reasonable limit then the answer should not be presented to a court. We have operated this way in the province of Ontario; we always take two samples and have the opportunity of additional methods of checking on the possibility of variation. For example, if one tries to cheat the machine, that is by pretending to provide a sample of breath, one can lower his apparent alcohol level by as much as 30 per cent. This is done by providing a very short expiration which mainly provides the air from the mouth, upper respiratory passages and really does not provide the air from the depths of the lungs which is fully equated with the blood. For this reason one might get variations in results. If they did not this factor would be in the favour of the accused.

On the other hand, it may well be that under very unusual circumstances indeed a person could have had some very recent large drinks; his alcohol level would be increasing in his system so that the difference between two samples taken half an hour apart may well be substantial. For that person we need to have some way of determining when the alcohol level, which we are speaking about in this law, is applied, are we concerned about it applying anywhere

within two hours of the time of driving or does this level apply at the time of driving. The intent is not clear here. If it applies at the time of driving then we need to have some means of determining that the alcohol level was at least as high at the time of driving as it was at the time of testing, which is always some time later. In the city it might be half an hour later; out in a rural area it might be as much as two hours later. We have used for this purpose urine tests where there is a suspicion that the alcohol level at the time of driving may not have been as high as at the time of testing. Where there has been a long interval between the time of driving and the time of testing or in cases where the driver has not been under continuous observation and there has been the opportunity of taking further drink, we have found the urine test useful. It gives us information on the average blood alcohol concentration prior to the time of taking that urine sample. In this way we have information on whether or not the blood alcohol level could have been lower at the time of driving or whether, in fact, it could not have been lower. So, we need to have this auxiliary information to assist us and it seems to me that the bill is certainly written so as to prohibit this.

Also, we need to have available urine tests under these circumstances to cover the problem of other drugs. I really have no measure of the importance of the driving under the influence of drug problem. I know that as we are focussing on this problem, we are beginning to find these people who are markedly physically impaired, who have very little alcohol, and who are then investigated for the possibility of other drugs, especially as our methods for determining drugs have been improved. They have improved considerably recently. In the last three or four years, with new methodology, part of which Mr. Lucas has been responsible for, we have extended our range of detection of drugs so that we can detect one hundredth of the amount that we could before. But we, nevertheless, need a urine or blood sample in order to deal with driving while under the influence of drug problem.

With respect to section 223(4), it states that the accused shall be offered a sample of the material to be tested to determine the level. We have collected samples of breath in plastic bags and these have been subject to a later analysis. This method has been fairly satisfactory. It is very difficult to get plastic bags. These can be packed in mailing containers of approximately four inches in diameter and nine inches long; it is an awkward parcel. It would be easy to inject air into the bag other than the sample of breath and for many reasons this would not be a good sample to give to someone to take away with them. However, in the last few months Professor Borkenstein, at Indiana University, has developed a method by which the sample of alcohol in the breath can be collected on silica gel. These are the little tubes that are used for this purpose. These, then, can be kept at least up to a month and the sample of breath can then be driven off and measured in the usual way in the breathalyzer. The results of this are extremely accurate. The set of results I have here, obtained by an associate of mine who went down to investigate this last week because it is very new, indicate a very, very small margin of variation between the breath reading done directly in the breathalyzer and the breath reading done by tracking a sample on the silica gel and subsequently measuring it on the breathalyzer. The variation here is within the limits of precision of the instrument itself. So I think this problem is solved and one can, therefore, carry out

the provisions of section 4 without any difficulty once a method of this kind is put into operation, and we fully intend to do it in Ontario anyway.

Those, gentlemen, are the comments that I have about the background for, what I feel to be an excellent bill. I am afraid that scientists are often very picayune about details but I do foresee some of the minor difficulties about which I have spoken in the bill as it is now written. Thank you very much.

The CHAIRMAN: Thank you very much, indeed, Professor Smith. I am going to make the suggestion that the various booklets and so on that you have produced be marked as exhibits 1, 2, 3 and 4 in the order in which they were produced so that later when the Committee are studying the matter they will have these before them. Is that agreed?

Agreed.

Mr. BELL (*Carleton*): Does that include the results of the last test that Mr. Smith just told us about?

Mr. SMITH: I just have one copy but I would be glad to file it.

Mr. BELL (*Carleton*): Would it be possible to have that filed as part of the record?

Mr. SMITH: Yes, certainly.

The CHAIRMAN: Mr. Tolmie you had your hand up indicating you wanted to ask a question. Do you?

Mr. TOLMIE: Thank you; I will when it is my turn.

The CHAIRMAN: We will then call upon Mr. W. F. Bowker, Dean of Law of the University of Alberta, as our next witness.

Mr. W. F. BOWKER (*Dean of Law, University of Alberta*): Mr. Chairman, my remarks will be confined to the issues whether a bill of this kind is in some way or another an infringement of our basic notions of fairness. Usually an objection of this kind is put in terms of either right of privacy, individual rights or dignity of the person and my purpose is to submit that a bill of this kind in no sense violates the British concept of fundamental fairness.

Throughout the administration of the criminal law we must keep a balance between two things. On the one hand, if we have offences in our criminal law we want to be able to impose punishment for them. We want to make the law effective. On the other hand we, under the British system, do not want to do this in ways that are brutal or that savour of the police state. When we think of our concept of fairness we usually refer back to the Magna Carta which was the source of the more modern phrase which says we should not punish people without due process of law. This is a vague term, of course, but it is a useful one and we regard it as one that we should observe.

One cannot enforce criminal law without using compulsion and the power of arrest itself is a pretty stringent power. We try, I think with a fair degree of success, to keep a balance in our law of arrest between the need to enforce the law and the avoiding of abuses. Not only in connection with arrest but in connection with the power to make searches and seizures, the police powers are checked by the need of a search warrant, though in certain cases searches can be made without a warrant; but the power to go into a person's home, car or to

search his person is a stringent one. We accept the fact that this can be done but we do put safeguards around it.

There is one little example, sir, that I do not think is so well known, of a rather wide search power we still have in Canada, and that is the writ of assistance. The writ of assistance is used under the Narcotics Act, under our excise laws and under the Income Tax Act we have something very much like it. It is a very wide search warrant but it is used only for cases where Parliament thinks this stringent power is needed. Mr. Anthony mentioned the power under the Identification of Criminals Act to take a fingerprint which is, of course, a very valuable method of identification; that short act specifically says that if a person refuses to give his fingerprints then the law enforcement authorities may force him to give a fingerprint. If it were not for that section in the act then the conduct of a police officer in seizing a man's hand, forcing it into the ink and forcing it on the paper would be an assault or more technically, a battery, under our law but Parliament has said that it shall be permissible. If it were not so then the whole effect of the Statute would be lost.

● (10.55 a.m.)

I think it is helpful in looking at this subject to make reference to the position in the United States. As we all know, there is a constitutional Bill of Rights in that country and there are several provisions in the Bill of Rights that a person objecting to a compulsory breath test might try to invoke as the basis of an argument that a compulsory breath test is a violation of one or other of the provisions of the Bill of Rights. There are three of them and I would just mention them briefly one by one. The first argument would be that a compulsory requirement of this kind is a violation of due process of law. If I am compelled to take a breath test for the purpose of seeing whether I have committed this offence, I would argue that my liberty is being taken without due process of law. Now, it is interesting to note that this very problem came before the Supreme Court of the United States several years ago in a case called *Breithaupt and Abram*. There a man was driving a car and he was rendered unconscious in the collision. While he was unconscious the police had a doctor very carefully stick a needle in his skin and extract the blood; the same showed a high content of alcohol and this was tendered in evidence. Now, many people thought that the Supreme Court would say this is a violation of due process of law because the Supreme Court had previously held that if the police came along after a man swallowed drugs and they give him an emetic that this is not quite cricket, it is a violation of due process of law and the evidence, namely the drug that was brought up from his stomach, will not be tendered in evidence. But the Supreme Court said we do not see anything in what was done, in the taking of the blood from the unconscious man, that is a denial of due process of law. Now, I only mention that to show that if that was held in the United States then I think we could properly say that it would not be regarded as a violation of due process in this country.

Now, the next possible argument he could make is that compulsory taking of a blood test is a violation of the protection against self incrimination. Now, by our standards anyway, this argument is fallacious. The protection against self incrimination is designed to prevent the state from hauling in people, compelling them to take an oath and compelling them to answer questions. In its proper meaning it does not have anything to do with a physical thing like the

amount of alcohol in one's blood. Now it is quite true that in the United States self incrimination has been given a wider effect, but I would only point out that in this country we do not have any rigid rule against self incrimination because the Evidence Act says that a witness in any criminal trial cannot object to answer a question on the grounds that it will incriminate him; all he can do is to invoke the section of the Evidence Act, then he has to answer but the answer cannot be used against him. So, this so-called protection against self incrimination is not absolute and it does not extend to breath, blood or urine tests anyway.

Now, the third possible argument that the man could use, in terms of United States Bill of Rights, would be that an enactment of this kind is an unreasonable search and seizure. Now, I think you could find American cases that say it is, but in our concept of what is a search and seizure I would say quite confidently that the taking of a breath test or a blood test is not a search or seizure at all.

I would just like to say a word about the British white paper of late last year that proposed an enactment along the general lines of Bill No. C-87. Now the British Parliament is always concerned about unfairness in law enforcement but the government concluded maybe that the problem was so acute that stringent measures were justified and they proposed a bill that works along these lines; the bill was brought in before the election but I do not think it was passed because the election intervened—I am just not sure. But that bill is wider than the one before us in this respect. It permits the police to stop anybody on a stop check basis, just like police can check for drivers' licences in this country, and they could set up a road block and ask anybody to take a breath test. But then the next step under the British proposal is that if the breath test indicates a high percentage of alcohol then the person can be arrested or if he will not go along to the police station, and there he can be made to submit to a blood test or a urine test. This is interesting in the British proposal. The British government did not say that a person must submit to a blood test because it requires this puncturing of the skin that I referred to a moment ago, and the white paper said that to make a person submit to a procedure of this kind whereby a needle was put in his body would rightly be regarded in Britain as repugnant and intolerable. So the white paper proposed as an alternative, if the man does not want to submit to a blood test he must submit to the urine test which does not involve any battery. Now I mention that to show that in Britain with all of its concern about fairness this provision for compulsory tests is proposed in the legislation of which I speak.

The CHAIRMAN: Now, it is 11 o'clock. I do not know if this is a good time to interrupt but we will be back this afternoon. Do you mind if we adjourn very shortly?

Mr. BOWKER: Certainly not, sir.

The CHAIRMAN: If there is something you want to just finish off very briefly, you may do that. But, would you come back this afternoon and start where we are interrupting you now?

Mr. BOWKER: Well, I am in your hands, sir.

The CHAIRMAN: I think we had better adjourn. The members of the other committee are here. You hear it mentioned that parliament is not working as

hard as it should, but I might call to your attention there are 13 committee meetings this morning, and we have to be out of here by 11 o'clock. I am going to suggest that we will be meeting here, in the room that has been arranged for, room 209 at 3.30 p.m. It might be better to fix the hour at four o'clock to allow a little bit of time between the orders of the day and our resumption of the meeting. We will come back at four o'clock. Is that agreeable to everyone?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: I would suggest that we adjourn this meeting then until four o'clock.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: In conclusion, may I thank once again you three very distinguished gentlemen for your contribution to this important subject matter. We will see you all here at four o'clock. Thank you very much.

AFTERNOON SITTING

TUESDAY June 7, 1966.

● (4.06 p.m.)

The CHAIRMAN: Gentlemen, I apologize for being late. The fact is that I am also on the steering committee on divorce and we met at 3.30. I did my best to get away and hurried over here as quickly as I could. Two members of our Committee are still over there and will be here very shortly. If I act like Nelson and announce that this is an adjourned meeting, we will just simply carry on unless there is some objection to that. I apologize to you, Dean Bowker, for keeping you waiting; I would ask you to continue with your statement, if you will.

Mr. W. F. BOWKER (*Dean of Law, University of Alberta*): The delay was no inconvenience to me at all, sir.

Actually, sir, there is very little I have left to say. The main point I wanted to make was that one of the objections we hear to proposed legislation of this kind is that it is unfair to the accused and this complaint is put in many forms, as I said this morning. My main purpose was to show that it is quite reasonable legislation. The degree of compulsion is comparatively mild compared to some others we have, and that even if we were under a constitutional bill of rights, which is much more rigid than our system, it would still not be bad, unconstitutional in terms of self-incrimination or in reasonable searches and seizures, or due process.

When we hear an accused person say: "You cannot do this to me", that is a legitimate stand to take if the police propose to use a rubber hose or the thumbscrew or even more subtle methods to force people to plead guilty or become guilty, but we are dealing with a serious social problem. The accused man always says: "You cannot do this to me", and he always invokes constitutional right and often he calls it a God given right. I am not saying anything original when I say that we are entitled to think of the rights of the victims.

If Parliament passes an enactment of this kind and puts in a provision for a breath test, which is the minimum that is necessary to make it effective I can see no basis for complaining merely because convictions may result.

My last remark, sir, is this, about legislation of this kind. I am not concerned about the details because the bill before us is slightly different from some others that have been recommended. I am not concerned myself in those little differences; others, I know, have spoken to matters like that. It seems to me that public opinion has to be mobilized against the drunken driver. I think legislation of this kind is partly the result of a groundswell; I would think that at least we can hope that an act of this kind would increase the groundswell, and heaven knows we need it. I would not pretend that any legislation will bring about the millenium overnight, but I do believe this that legislation can help to mould public opinion in spite of the old saw that you cannot legislate morality. I think legislation can mould public opinion, and I think people might well be taught that we cannot drink and drive any more. I think legislation of this kind is a worth while experiment, if Mr. Mather does not mind my calling it that, toward ridding ourselves of this evil.

The CHAIRMAN: Thank you very much, Dean Bowker. I have taken it from what you have said that legislation of this type might accentuate the groundswell and, in particular, I think the education will make it acceptable, that is, the theory behind it will make it acceptable to the general public and they would realize the benefit of what was being attempted to be done.

Mr. BOWKER: I agree, sir.

The CHAIRMAN: We are open for questions. Mr. Tolmie you were the first to have raised your hand.

Mr. TOLMIE: My question is directed to Dr. Ward Smith. From my recollection of the various statements in regard to this matter, I understand that certain people react differently, and as far as their actual impairment of ability is concerned it varies to a great extent. In other words, some people might have an alcoholic content of .20 per cent and still not actually show signs of impairment. Other people, and I think it is perhaps those who are introverted, are often helped as far as their ability is concerned at levels up to .08 per cent. My question is this. I understand from your remarks that you do not agree with 222(2) that to be on the safe side, before a conviction would be automatically registered, you would make it .1 per cent. Is that correct, doctor?

Dr. WARD SMITH (*Canadian Highway Safety Council*): Well, my position as a scientist is that having dealt with performance tests, traffic surveys, and contact with others who researched this field, we find it is true that there is a tremendous variation between people in their response to alcohol. This variation is not as wide as one might suspect by watching people drink around the table. There are many factors in the amount of alcohol one needs to consume to get certain alcohol levels in the blood at various times. But even when you have certain alcohol levels in the blood there is still a variation in the response of the individual to that alcohol level; between individuals and in a person on different occasions.

We find that, depending upon the measuring devices, a relationship between those more susceptible to alcohol and those more resistant. The scale of this

is very constant depending upon the sensitivity of the measuring devices. If you are taking mere walking and talking, for example, as your criterion, then the range between people is between .05 per cent and .25 per cent, this is the thing that we measure in our performance tests and the sort of thing a police officer or medical man does when he examines a person. You will find some severely intoxicated at .05 per cent; others not until you get to levels of .25 per cent—the odd individual.

● (4.15 p.m.)

But if you take, on the other hand, the criteria of driving, as was done in the tests here in Ottawa,—the R.C.M.P. tests which I think have been referred to—then you begin to pick up deterioration in driving performance at levels of .03 per cent but not in all people studied until you get up to .1 per cent. Then you have to think for a moment that these tests are really tests of performance where the subjects have made a sort of game of this thing. They have pulled themselves together to do the best job possible, and are these really the conditions that apply on the roads? I think it is for Parliament to decide what levels need be applied here and what philosophy they are going to accept. It is for the scientists to describe the results of experiments and what they mean.

We know, for example, that there is agreement in the levels where you begin to show impairment in driving in performance tests, where you begin to pick up increased hazards in terms of traffic accidents and where you begin to show impairment in many laboratory tests; that level ranges between .03 and .05 per cent. If one were to use that reason alone and not associate it with impairment, one could set a level of that kind as a strict prohibition. If we want to bring in the term “impairment” and here it is written as “impairment of ability” then we have to look to the experiments to see what sorts of ability we are talking about, and the experiments themselves are not really germane on the point because the experiments are measuring performance. Performance is impaired at .1 per cent; the ability would have been impaired at some lower level, possibly .08 per cent. However, the experiments have not yet proven that.

Mr. TOLMIE: Yes, but the point I am trying to make is that from what you have said, at least this is the interpretation I derive from it, .1 per cent there is very, very little doubt that most people have their ability impaired as far as their driving is concerned. Therefore, it would be a more realistic figure to insert in subsection 2 than .08. Is that the case. You would have it compulsory; the test would have to be taken and if it was .1 per cent then automatically he would be convicted of ability impaired. If it was something less, then it would just be a factor to be used among other evidence. This is the point I am trying to establish.

Mr. SMITH: Yes. The level that I present in evidence now in these cases, when I am called, is .1 per cent as meaning impaired.

An hon. MEMBER: How many ounces would that require.

Mr. SMITH: It would depend on the size of the person, of course; if it were an average person, amount the present in the body at the time the tests were taken, say a person of 160 pounds, it is equivalent to the presence of approximately 7 ounces of whisky in the body at the time. This only represents what is

left over after the body has metabolized the alcohol right from the moment the person starts drinking. To this amount you have to add somewhere between an ounce and two ounces for each hour from the time the person starts drinking. You get into a bit of an involved calculation in terms of drinks necessary. The meaning of .1 per cent is certainly more definite than one could expect on just watching people drink. I think it would be useful to have been tested on the breathalyzer, to see something of the workings of this relationship between the amount consumed and the amount remaining in the blood stream. People are consistently amazed at how low the levels actually are after an evening of drinking.

Mr. TOLMIE: In other words, you would not want to see a situation where a man who had a test and it registered .08 would be automatically convicted of ability impaired.

Mr. SMITH: I do not think today that our scientific evidence really supports that position. Scientific evidence today does support the position of .1 per cent, and not of most drivers, but of all drivers studied. It is a much higher level of certainty than most. It is as near a scientific certainty as we can find. It is a much greater certainty than a reasonable medical certainty, for example, because this only indicates preponderance as I understand it from the lawyers. It is just something short of absolute.

Mr. TOLMIE: You would want to make this an irrebuttable presumption.

Mr. SMITH: All I can say is that this is nearly a scientific certainty. It is for the lawyers to translate that into the terms which are acceptable by law.

Mr. AIKEN: I would defer if Mr. Scott has some questions. I know that we rather cut him off when we went ahead this morning but I defer to him if he is ready.

The CHAIRMAN: You had your hand up.

Mr. AIKEN: I am ready to stand in line. Mr. Chairman, I defer to Mr. Scott.

The CHAIRMAN: Do you want to go ahead, Mr. Scott?

Mr. SCOTT (*Danforth*): I have a couple of questions. I would, first, like to ask a couple of Mr. Anthony. We are still in the process of assembling evidence and information and this morning you told us of some of the other jurisdictions where they had brought in mandatory breathalyzer tests or perhaps some other type of chemical test. Is there any evidence you know of in the jurisdictions where these tests have been made mandatory which indicates that the incidence of drinking to accidents has reduced.

Mr. ANTHONY: The problem is, as I understand it, is that the statistics in Canada are not in a position yet where we can accurately record even our present conviction rate or rate of impairment in intoxicated driving. The Dominion Bureau of Statistics has just started, since late 1962, to compile material from information being fed to them through the various police departments on a uniform scale of information regarding charges proceeded with under these sections and records of numbers of convictions obtained. This information has not been compiled for a long enough period of time yet to establish any trend even in the number of offences, let alone at this point to say that there has been any effect upon the trend because we have yet to establish

what the trend is. We have figures now for the last year and the year before last. I do not have them available with me; they show an increase but we cannot go back to 1956 and say that there has been definitely an increase.

In the provinces which I have mentioned, British Columbia's legislation was just introduced this year and will not be assented to until July 1; Alberta's likewise will not be assented to until July 1. Saskatchewan's has been in effect since 1959, I believe. However, the frequency of impaired driving in Saskatchewan has never been to the level where it has been in British Columbia or in other areas. We have attempted to obtain some figures from the Saskatchewan government on this, and I believe we are still waiting for some reply, to show a reduction in the trend. But you cannot say there is a reduction until you find out what the trend is and nobody really has kept statistics up to this point. We have records of convictions and so on but we have not come to the point yet where we can keep meaningful statistics so we can predict the trend and get a reduction. Ontario may have such records; I am not sure. New Brunswick introduced their legislation just last year and the other three provinces who are considering this legislation are Prince Edward Island, Nova Scotia, and possibly the province of Quebec as a result of some recommendations from the Quebec law society which are just as recent as last week. The only province that has had such long standing legislation is Saskatchewan and I have no information from them.

Mr. SCOTT (*Danforth*): Is there anything in the way of statistics from the United States of which you know?

Mr. ANTHONY: Not of which I know. The national safety council has some figures, but I am not sure. Again, it is a matter of reporting and the United States is still trying to set up a plan which will establish a national reporting system, so that you can get meaningful statistics in reductions or increases. This is something, again, which has not been established; it is a matter of financing I think, to spend the money to set up a bureau to compile the necessary information.

Mr. SCOTT (*Danforth*): Did I take it from your statement this morning that you are suggesting an absolute offence be created to operate a motor vehicle with an alcohol concentration in the blood above a prescribed level?

Mr. ANTHONY: The suggestion which I put forth is actually the submission of the Canadian Highway Safety Council to the Department of Justice from resolutions of the council itself. Now, the council, in 1955, adopted the original resolution of the executive committee of the Canadian bar who proposed an absolute arbitrary offence for having a level of blood alcohol exceeding a certain point; also included was a provision still making it an offence to be impaired. In other words, they set two offences out, and this was originally in the first resolution which was submitted in 1965 by the Canadian Highway Safety Council. This was our original submission; that we concurred in the report of the executive committee of the Canadian bar in their suggestion of creating two offences. I did not spell it out here but I merely said that we suggested it was a good idea to set a level at which it would be an offence. Whether or not we would call this offence impaired driving or whether we would just call it an offence, would be something else again.

Mr. SCOTT (*Danforth*): One of the things that worry some of us at times about the compulsory breathalyzer tests is the fear that once it is introduced in court an almost iron curtain goes down over the eyes of the magistrate, and from that point on the accused is, in fact, convicted. This may be an erroneous feeling we have—I have not been able to go through your material—but have you collected any information on the convictions and acquittals where the breathalyzer is introduced and where it is not?

Mr. ANTHONY: Ontario could speak with more information on that and perhaps Dr. Ward Smith might be able to add something to my answer. I will attempt to answer it by saying that we have voluntary breath testing in Edmonton. The city of Edmonton has had a program under way for the last two and a half years. We have not had too many contested cases with the breath testing apparatus; however, we have had one or two which we have lost on the basis of the court not being absolutely satisfied with the way in which the test was carried out.

This is the question, of course, which the courts will look into. As Dr. Ward Smith has outlined in his books that he had distributed to the Committee, there are several things which the court, the defence counsel and the prosecution, must look out for to be sure that the tests are conducted in the fashion as prescribed by those who have tested and approved this apparatus. These are the areas where the defence would naturally examine the crown's evidence on it. Unless the crown can establish that these tests have been performed in accordance with an accepted standard procedure, which is acknowledged as being the proper procedure, then I am sure the crown would fail in its case in so far as the admissibility of the evidence is concerned. The defence counsels have been made aware of these problems by the publications which have been put in the "Criminal Law Quarterly" by Dr. Ward Smith and others. There certainly are defences to it and I do not think it would ever get to a point where it is open and shut because you have a breath test result.

Radar is the only thing I can equate it to, because it is an instrument designed to measure something also. Radar is not above reproach, because the crown must establish, firstly, that the machine was set up; that it was accepted; that it was tested during the period it was in operation and it was re-tested upon conclusion and that all three times it proved to be accurate. They must also be prepared to introduce the graphs showing the speed at which the vehicle was clocked, and they must also show that the machine had been tested within a recent time for accuracy. These are all things that the crown must be prepared to introduce.

Mr. SCOTT (*Danforth*): Your crown counsel in Alberta must be far more thorough than the ones in Ontario.

Mr. ANTHONY: They must be prepared to produce it; whether or not the procedure has done away with the requirement or defence counsel have decided that for their purpose they will accept the machine as accurate is another thing. But the law is clear, that these things must be established in order to prove the accuracy. However, defence counsel have on many, many occasions waived the accuracy of the machine. They have questioned other things such as the identification of the accused or some other matter relating to the defence.

Mr. SCOTT (*Danforth*): One last question and then I am through with Mr. Anthony. In your studies, have you found any information that the severity of the penalty has much to do with the drinking and driving; assuming that conviction is obtained, do you have any general observations to make to the Committee about the severity of the sentence imposed.

Mr. ANTHONY: One reason why I feel we are not getting more convictions for intoxicated driving is that we have a mandatory seven day jail term. The courts—and I am not saying rightly so—are reluctant to put a man in jail for seven days because, as you know, since it is a social offence, a good many people who have respect in the community, apart from their driving, become accused of this offence—some of whom may be doctors, lawyers or leading citizens—and the courts are somewhat reluctant to impose the minimum penalty under the intoxicated driving section and throw them in jail for seven days. Because they are presently included offences the courts may, as their alternative, reduce the charge to the lesser and convict of impaired driving which gives them the discretion of a fine.

● 4.30 p.m.)

In regard to the other half, I imagine the question was, do I feel that the fines were sufficient to reduce reoccurrence of this offence or act as a deterrent. In my experience, and I am speaking of western Canada, as I do not have any knowledge of eastern Canada, generally the fines are not financially high enough to act as a deterrent. A fine of \$150 to \$175 for a first, and sometimes a second offence, is not a sufficient financial lost, if we are thinking of financial loss in the form of punitive and as a deterrent. It certainly is no deterrent when you consider that under many provincial acts there are minimum penalties, such as \$500 for overloading a truck; this is the minimum penalty. The minimum fine for the first offence of selling liquor as a bootlegger is \$300. There is no balance—

Mr. SCOTT (*Danforth*): It has not stopped the bootleggers either.

Mr. ANTHONY: No, but he has a financial gain, too. He figures a profit and loss; whereas an impaired driver does not, this is a straight loss if he is caught. It is difficult to equate the seriousness of the offence and the fine. I am not suggesting that we put in a higher minimum fine in the act, but perhaps the courts might consider increasing the fines; the suspension is, of course, the biggest deterrent to impaired driving. This is the thing upon which most appeal their convictions. It is not so much the fine, but the suspension which follows the fine and the fact that they are going to lose their insurance standing and probably will not be able to get insurance again for some period of time. Many people, of course, claim that a car is much needed in their employment and a six months suspension will create a hardship. I think the greatest deterrent in the impaired and intoxicated driving section is the suspension or the provision for the prohibition, but the fine certainly does not do it.

An hon. MEMBER: My experience does not prove that.

Mr. MATHER: Mr. Chairman, I have one question related to the one asked by Mr. Scott; I wonder if I could just ask it? Mr. Anthony, Mr. Scott asked if you had information or statistics for various provinces in Canada regarding the

results of legislation on impaired driving in respect of mandatory tests. You did not have the figures, as yet, for these provinces and I can understand that. But we had testimony at the last meeting of this Committee from Dr. Troup, who is here today, which stated that Canada is at the very bottom of the countries reporting to the World Health Organization in regard to traffic fatalities. Our record is the worst, statistically, of all the 26 countries reporting. At the very top of those countries, the countries which seem to take the least toll, are the Scandinavian countries which have realistic or mandatory tests for impaired driving. Is this not so?

Mr. ANTHONY: I agree and as I outlined, the problem here is an enforcement technique, because as it presently exists the only time the offender comes to the attention of the police, generally speaking, is (1) as a result of a motor vehicle accident; (2) as a result of erratic driving or (3) as a result of being found in the care and control of a car in an awkward state, such as in a ditch or parked on the side of the road. But we miss all the fellows who are aimlessly going down the highway, on the move, who do not quite come to our attention. We are using rather archaic techniques to detect the offenders because we have to rely on a physical system of observation, to try him and by the time a person gets to the point where physical observation will uncover impairment, as Dr. Ward Smith says, he is probably past that stage where his ability is affected and is now in an advanced stage of impairment. This is probably why we are behind.

Mr. AIKEN: Mr. Chairman, my questions are along the lines of Mr. Scott's, and the other ones as well, and they relate to the question of conclusive evidence that is put in this bill. All the witnesses today indicated general approval of the bill, and I did not hear a reservation about this subclause 2 which provides that a level of .8 parts per thousand or, perhaps, .1 part per thousand, is conclusive evidence. Professor Bowker because he gave us something of the moral issues involved here, and I would like to ask if he has any comment about making such a finding conclusive evidence of impaired ability?

Mr. BOWKER: No, Mr. Chairman, I do not. I said earlier I had not intended to comment on the details of the Bill, although my own thinking had been along these lines, that it would be better to preserve impaired driving as it is, and I would add drunken driving too, although we know of the difficulties in getting convictions.

I would have thought it would be wise to add this as a separate offence. I know this bill does not do that, but that is what the British bill will do, and that means that I am prepared to say that in addition to the offence of impaired driving, and probably drunken driving which depends on the evidence of one kind or another that the faculties have been affected, to make it an automatic offence at a specified level.

Now, if I were asked the question: "What percentage do you say, .08 or .1?" as a layman all I know about it is what I have learned from attending these meetings, and I do not feel that my opinion would have any particular weight. I do lean in this direction, but I think it would be pretty strong medicine today to advocate a bill which would make it an offence to drive after drinking at all, or after one drink; but I do think that something could be said for a competent

legislative body taking the position: We will not let people drive at all. We are a far distance from that in this legislation, but the public would certainly support that for aeroplane pilots or bus drivers or engineers of trains. I would not, personally, feel any more shocked at making it an offence for car drivers. If you put it low, say, .04, there would probably be a fair number of people, if I understand Dr. Smith correctly, whose ability was not affected at all. I personally do not scruple at the legislative power being used to say: "You just will not do it". However, my understanding is that at a level of .1 or even .08 most people are impaired. I hope I have that correctly. I would not share any tears over the odd creep who was able to show to a court that he is just as good as he was. Others may disagree with that, but I appreciate the question and I hope I have been clear in my views about it.

Mr. AIKEN: We, of course, are not limited in any way by the bill, which is purely a guide. I take it that you would then suggest that a separate offence be created which would, in effect, be that any person in care or control of a motor vehicle who has more than, let us say, one part per thousand of alcohol in his blood, would be guilty of an offence.

Mr. BOWKER: Yes, I would, sir.

Mr. AIKEN: With nothing further; the clinical tests having been proven and the fact that he was operating the vehicle having been proven, then you would accept it as a separate offence?

Mr. BOWKER: And leave the other offences as they are. Now, if I may just add this, sir. I have heard this argument raised against the position I have just taken, and this might very well happen. I do not know if this was mentioned before your Committee or not. If we added this new offence, making it an automatic offence with the given level of alcohol in the blood, there is the danger that the other old offences that we have now, might fall into disuse, that they would not be used and we might get a practice where the iron curtain might fall at .08 but would be lifted for everybody below that. That might be unfortunate.

Mr. AIKEN: That leads me to the next question I was going to ask. If we establish a minimum of one part per thousand, do you think that it might have the converse effect of dismissal of charges for people who had only .5 and yet had other clinical symptoms of impairment.

Mr. BOWKER: In theory, it would not, Mr. Chairman, because we still have the impaired offences and I can imagine that a chap who has never had a drink before would be quite addled after a couple of beers and in truth he would be impaired. It did seem to me to be fair to point out, and I think this is what the gentlemen who asked the question had in mind, that in practice the magistrates trying these cases might get an idea life this, Parliament has set this level of .08 or .1, and there might be a reluctance to convict on the other charges. I do not know whether that is so and I would hope it would not be true. I think we have the same thought.

Mr. AIKEN: I have been trying to separate in my mind what the difference would be between the two lesser offences; that is, what is provided in the proposed bill which says that, let us say, one part per thousand shall be conclusive evidence of impaired ability, and the charge which you suggest which is substantially the same thing.

Mr. BOWKER: Without relating it to impairment?

Mr. AIKEN: Well, it is a presumption of impairment.

Mr. BOWKER: According to this bill it is an absolute presumption.

Mr. AIKEN: Yes, but what I am getting at is, would the two offences not be the same thing?

Mr. BOWKER: I would think not, sir, if we concede that some people are impaired at a lower level.

Mr. AIKEN: Perhaps then it would be the difference between proceeding on an indictment and summary conviction; in other words, the impaired driving would be a more serious charge and perhaps carry a more serious penalty?

Mr. BOWKER: I do not know. I would guess that this would be regarded as the more serious offence but I bow to those who have more experience in these things.

Mr. AIKEN: Perhaps, Mr. Anthony would like to answer that.

Mr. ANTHONY: Your suggestion was that if we had the two, there would be an arbitrary level of impairment at, say, a lower point?

Mr. AIKEN: No, I was assuming that it was the same point.

Mr. ANTHONY: No, you would not keep it the same. The question I think, which is properly being considered now is, do we want to go with the present definition of impairment? If so, is this what we are trying to legislate against, impaired drivers, or are we trying to legislate against people whose driving is adversely affected by alcohol, because there is a difference, as Dr. Ward Smith pointed out, in people who are adversely affected by alcohol. The scientists have agreed that somewhere between the level of .03 and .05 almost everybody, to a certain extent, have their abilities and faculties affected by alcohol to such an extent as to adversely affect the operation of a motor vehicle. From that level on up to a higher point the propensity for them to get involved in motor vehicle accidents, or to react to certain given situations, becomes worsened as the level increases. Therefore, we have a low level at which almost everybody becomes adversely affected. Then we have another point 10 at which the scientists will say that everybody is impaired. That is, absolute impairment; no faculties to carry on. It is not that they are adversely affected, but that they cannot drive safely period.

What I gathered from the conversation between yourself and Dean Bowker was that the Dean was suggesting that an offense be created at the lower level. This was basically the suggestion of the Canadian bar, that an offence be created at the lower level—creating an offence to have alcohol in your system of a certain amount, which is a smaller amount than what one would consider for impairment. They, then, left impairment as an offence separate and apart, but did not define what it was. In other words, it was probably an offence of a degree of less impairment greater than the minimum.

Mr. AIKEN: I have just one more question along that line. I do not know who wants to answer it but it is a straight question. Do you believe that such legislation is going to do any real good in connection with the drinking driver problem? In other words, is the mere fact of there being a penalty going to

prevent people from driving while drinking unless it is a serious matter. I am thinking about the minor charge that has been proposed. In other words, is this minor charge going to be sufficiently ridiculous that everybody will ignore it and take their chances on the breathalyzer test and say: "Well, I will only get a \$50 fine anyway", or would it not be better, perhaps, to leave the more serious offence? I would like Dr. Smith to answer that. He professes a purely scientific interest but I know he has had more experience in prosecutions probably than most of us.

Mr. SMITH: It seems to me there is something here that we have not spoken about yet, and there is not that much evidence on it in this country, although there is in other countries. The few studies that have been done indicate that this is a factor, and that is that those who are responsible for much of the drinking and driving are the least compulsive drinkers. When you look at the exceptionally high alcohol levels that some of these people have and are still able to sit erect behind the wheel of a car, and the small degree to which their walking and talking is affected, by definition they have a tremendously high tolerance, this being one of the signs of continued excessive drinking. We are dealing with a pretty hard core group of people. I think it is very important to identify these as early as possible if only to have them look at themselves as others see them, to get some insight into their own problem, and at least to remove them from the road, so that they are not a problem to other drivers.

I do not think that education about driving is going to reach these people; however, education about drinking might. I think this is part of this problem which is beginning to become recognized. For example, we are finding now that on the average the alcohol concentrations in blood and breath tests that we are dealing with, I think, are on the average lower than they were five years ago. I think this is due to enforcement and catching up with some of the more rugged types of drinkers.

Mr. AIKEN: But would a rather minor created offence accomplish this result? Is it your proposal that such an offence would pick them up earlier, perhaps?

Mr. SMITH: As long as he is certain. I think this has had a tremendous effect in altering the drinking and driving habits of the responsible people, and you begin to identify very early in the game the irresponsible people.

Mr. AIKEN: In other words, a person who is three times convicted of driving under a minor offence with a minor amount of alcohol.

Mr. SMITH: I think the penalty for a repeated offence might well take care of the situation.

Mr. AIKEN: May I ask one more question right along the same line? Can any of the witnesses tell us whether the imposition of the impaired driving charge as an alternative to the drunk driving charge did anything along the lines about which we are talking? Has it brought about more convictions for driving after drinking?

Mr. SMITH: I have some evidence on that. The first studies were done in 1950, before the impaired driving legislation came in, a study of traffic accidents in Toronto; and at that time there was nothing between drunk driving and careless driving. There were many careless driving charges where the alcohol

level was high, because we were doing a breath test at that time in the university survey, but there were very few of drunk driving. It seemed at that time that careless driving was covering over for what is now occupied by the impaired driving legislation.

Now most of the charges are impaired driving but there are also a substantial number of driving while intoxicated charges. There has been a better enforcement in the sense that more charges are being laid; a greater attention to this matter is also evidenced by the increasing number of tests over the years. It started off in 1951, and I do not think there were any more than 500 to 600 tests of this kind being done in the province. Last year—we do not do them all in the laboratory—but it is estimated something like 12,000 breath and blood tests were done in the province. With a better tool for enforcement I fully expect we will be doing double that.

Mr. RYAN: Mr. Chairman, I would like to ask Dr. Smith a few questions. First of all, doctor, I believe you said this morning that absolute impairment resulted with almost everyone at .1 per cent per thousand. Is that what we are to understand?

Mr. SMITH: In all drivers studied by our most sensitive tests it had a relationship to driving performance.

Mr. RYAN: But there was still a slight qualification. You at least said at one point that there was absolute impairment with everyone at .1 per cent?

Mr. SMITH: As a scientist within the biological field, I am unwilling to say absolute.

Mr. RYAN: But you are substantially satisfied that, for the most part, it is a blanket.

Mr. SMITH: I think it becomes beyond the level of this phrase that the lawyers use, "beyond a reasonable doubt". It is beyond an almost unreasonable doubt.

Mr. RYAN: Would you be convinced that in 999 out of 1,000 cases there would be absolute impairment?

Mr. SMITH: I would think at least that, based on studies by proper methods which have a relationship to accurate driving performance.

Mr. RYAN: Could you tell the Committee how many ounces of full proof alcohol in arterial lung blood would give .1 parts per thousand. Possibly I missed that this morning.

Mr. SMITH: Well, .1 parts per thousand distributed throughout the body would be the equivalent in a person of approximately 160 pounds, of seven ounces of whiskey in the body at the time the sample was taken.

Mr. RYAN: That would be grain alcohol?

Mr. SMITH: Yes.

Mr. RYAN: What about sugar based alcohol? Would there be any difference?

Mr. SMITH: No; all spirituous liquors in Ontario are diluted to the same horribly low value of 40 per cent by volume. So, 40 per cent of the bottle at which you are looking is alcohol and the rest is water. It is the most expensive kind of water you can buy.

Mr. RYAN: What is the highest proof you can possibly get in a grain alcohol?

Mr. SMITH: In American proof it would be close to 200 proof; American proof is different from ours. With us it is 165 proof, 95 per cent alcohol.

Mr. RYAN: You have told us that a short expiration into the breathalyzer could cheat the machine by 30 per cent. I wonder if the machine can be over excited or cheated in the opposite direction? Take, for instance, a hypothetical case. Say the driver has a flask with him in his car and is sober; he takes one good drink, say, an ounce and a half of full proof grain alcohol; he chokes at the time of taking it, some of it goes down into his lungs; he drives off the road as a result of his choking, and suppose he hits a tree. He is taken to the station not badly hurt, but he is tested within half an hour. Could you get a false result with the breathalyzer from a situation such as that?

• (5.00 p.m.)

Mr. SMITH: No. There are several things bearing on the answer, though: One, that if you rinse your mouth out with an alcoholic beverage, you must wait at least 15 minutes before supplying a sample to the instrument because the mouth is contaminated with the recent drink and you can give a falsely high answer. The rule is that no tests are to be taken until the person has been in your presence for 15 minutes with his mouth empty.

Mr. RYAN: What about alcohol in the lung?

Mr. SMITH: The question of alcohol in the lung, if it was right in the lung this would be so objectionable that the person would be in very bad condition, indeed. But even there the tissues of the lung would tend to—this would be very irritable to the lungs and the person would be very sick indeed. What you are verging on, though, is alcohol in the stomach. There was a theory at one time that with alcohol in the stomach you might have fumes coming up the gullet and throat and so contaminate the sample. This has been proven to be false. The bases for this theory were one or two results in some quite old Scandinavian literature that goes back to 1930. This is really dealing with a situation where very early after drinking there is a disparity, or can be where the amounts consumed are large, between the alcohol concentration in the arterial blood; that is, the blood going through the lungs, and the blood coming back through the veins. It is very difficult to duplicate this because one needs to take extremely large amounts of alcohol in a very short time and do the testing very, very early. These differences exist when you take an actual arterial sample. So whether you take breath or arterial sample, these two agree even during this period.

This work was nicely brought out in the third international conference on alcohol and road traffic and gives tangible evidence that this is the explanation; that it is due to the difference that exists at that time between arterial and venous blood. It is not due to alcohol coming up from the gullet, and so forth. It is also said in this theory that these fumes coming up from the gullet and throat are simply enhanced by taking bicarbonate. This has been tried. We have tested it many times in the laboratories with subjects, and so forth, and we have been unable to obtain any effect in this matter.

There is a possibility, however, that unobserved by the officers who are taking the samples, at the time there is alcohol in the mouth, there could be a regurgitation of actual stomach content then swallowing it which would have the same effect as though you had tasted a diluted alcoholic beverage. This is one of the reasons, this odd chance—I do not know what the chances are but they are very small, indeed,—why I would like to see two samples taken at least 15 minutes apart. Now, the chances of this happening and influencing the results to the same degree on two separate occasions are so remote that you need not consider them. But this is a remote possibility, and one of the reasons, along with the usual chemical reasons, for verifying the result, that I would like to see two samples taken.

An hon. MEMBER: Two samples are taken in Ontario?

Mr. SMITH: Yes, in Ontario it is. But I understand that in other jurisdictions this is not the practice.

Mr. RYAN: To get back to the case of the actual inhaling of the alcohol into the lungs, doctor, am I to take it from what you said that a man would be so sick that you would not be able to test him if he had inhaled some alcohol directly into his lungs?

Mr. SMITH: Yes. There would be so much else wrong with him that you would take him to a physician anyway. A reasonable concentration of alcohol in the lungs is extremely irritating, much more irritating, for example, than taking water down the wrong way.

Mr. RYAN: If you did take a sample of his breath with that condition existing in his lungs, would it throw the breathalyzer out?

Mr. SMITH: Yes, it might well be so high that you would know there was something wrong. I cannot imagine it happening.

Mr. RYAN: If the tests were repeated you would not get the same results from the second test. Would the 15 minute spread be sufficient under those circumstances?

Mr. SMITH: This man is sick; he is coughing, he is gagging; you know the way things happen when you get water down the wrong way. Alcohol's effect on the tissues of the lung would be much more intense; even the dilution of an alcoholic drink, and I think you would get an extremely high effect for a long time, so high that you would know something was wrong.

Mr. RYAN: Could you give us an estimate of how long that period would be?

Mr. SMITH: I have not experimented; I really would not know.

Mr. RYAN: It would be a very rare thing to happen?

Mr. SMITH: I have never had it occur. In the material that we have dealt with over the course of a number of years—we must have dealt now with 60,000 or 70,000 breath tests—and thank you, Mr. Ryan, this is the first time the question has come up. I think the coughing of the person would eliminate the bulk of the liquids, and the remaining liquid would be absorbed by the tissues of the lung, probably at much the same rate that the tissues of the mouth absorb the liquid.

Mr. RYAN: Could I ask another question in another area. How many ounces of alcohol per hour passes through the human bladder; that is, full proof, grain alcohol.

Mr. SMITH: Of the alcohol we take into our system, approximately 90 per cent of it is burned as developed heat energy by the liver; about 5 per cent of any given amount is exhaled through the lungs and the other 5 per cent is excreted through the urine. Excretion in lung and urine is in relation to the concentration in the blood. The average person gets rid of approximately the equivalent of an ounce of whisky per hour, a third of an ounce of pure alcohol per hour. This is not a fixed rate in the sense that it varies considerably from person to person. One of the major factors in this is body temperature; if you are going through a steam bath you can increase this rate to two ounces an hour; if you are chilled and in shock perhaps this rate is only half an ounce an hour.

This factor of different rates of removal between people is one of the biggest factors in being able to drink the other fellow under the table. One fellow can handle two drinks an hour, where the other can only handle one drink an hour.

Mr. RYAN: How long would it take the average person to sober up after drinking .1 part per thousand, or having that level in his blood?

Mr. SMITH: At that level of alcohol, coming from .1 per cent, he loses, again on a good average figure, .015 per cent per hour. It would take him approximately three hours to get down to .05 per cent, and for a person who tolerates that level, .1 per cent fairly well, there would probably be very little residual effects on his ability to drive.

Mr. RYAN: It is common knowledge that a person drinking beer seeks to urinate more frequently than a person drinking hard liquor. I am wondering, when you are asking that we consider urinalysis as well as breathalyzer tests, one being supplementary to the other, do you have mandatory tests in mind or voluntary tests in mind?

Mr. SMITH: No. I would think that, of course, because of the delicacy of the situation, especially where females are involved, the only mandatory provision should apply to breath tests, but once you are satisfied on the breath test itself, all that the urine tests can do for that driver is to be an exculpatory thing. If in fact his alcohol level was rising and he did not have that alcohol level at the time he was driving, but did have it subsequently at the time of testing and where that was suspected, you would want to leave it open so that the proper investigation could be made which might be well in the interest of the accused.

And secondly, at another stage of the investigation, should the alcohol content prove negative, or of very low value and a person showing very marked impairment, the investigating officer would then take him to a physician for examination to see whether there were not some of these other medical conditions affecting this person. This happens many times. The physician, having made his examination and not having found anything, we might well then turn our thoughts to the question of drugs. We would then want to be able to obtain a urine sample, and in the odd case, a blood sample. But I feel that this would have to be on a voluntary basis or probably on a voluntary basis.

Mr. RYAN: Can you see a large field for abuse of this voluntary testing suggestion in the policing area? What I am getting at is, are we going to have suspects held a great number of hours longer than they otherwise would be for the purpose of putting them through a good number of tests? Are we going to have their urine taken whether they have expressly approved of it or not? Are they going to be held until such time as they do urinate? Is this supplementary evidence going to be used? What dangers are there in this area? Maybe Mr. Anthony might be helpful.

Mr. SMITH: This is what is happening now. All of this is on a voluntary basis, and our instructions to the officers are, in the course that we put on for them, to try to obtain a breath sample if you can. Where there is quite a length of time between the time of driving and the time of arrest, by all means attempt to get a urine sample, because this will then throw light on whether his alcohol level is falling or increasing. If the alcohol level that you do obtain is lower than you expect by reason of the behaviour of the person, then you must take him to a physician because the guy might be sick. Now, all this is in the interest of the accused driver. I am quite sure it is not being abused.

Mr. RYAN: I think that is all I have to ask.

The CHAIRMAN: Does anybody else have any questions?

Mr. SCOTT (*Danforth*): Mr. Smith, I was not aware, until you mentioned it, that two samples are not taken in other jurisdictions. Would it be your view that a single breathalyzer test is not sufficiently reliable?

Mr. SMITH: We have had no difficulty with single tests. It is against my very principles of analysis. The only way you can get at variations in such things as reading the dial adjusting the knobs and so forth is through the variation you get on repetitive performance. It is a check on all aspects of things. When we do blood tests in the laboratory even though we just have the one sample of blood, we do the analyses in duplicate or triplicate and this is in laboratories where you have professional scientists doing analyses. I do not feel that you should do anything less with breath tests in the field done by what are essentially trained technicians.

Mr. SCOTT (*Danforth*): Would you not agree that you are going to make that a presumptive case. It should be all the more necessary.

Mr. SMITH: Yes, I do. I have been very concerned with this whole question of standards of analysis. It is a very verdant complaint. I am as unpopular as a skunk at a garden party down at the national safety council, for example, because, again, in my capacity there I have repeatedly spoken out for two tests and very few down through the states do this. I feel it is the only way to be really sure and open up this whole question of variation in a proper manner. The usual police response of course is, well, what do we do if the tests are different? Well, you present them both so the court can have the full information on which to base its finding.

Mr. SCOTT: At noon hour I was interested in trying to glance through this very excellent material you gave us. I gather from your information that it is important that these officers be carefully trained to administer the tests. Have you any information on how these regulations are laid down? For example, I presume it is a provincial matter in each case?

Mr. SMITH: I think you have to appreciate that this whole program sort of grew up like Topsy. As scientists we set out certain standards, without having any direction in the matter at all, standards which we felt would develop the right type of attitude, which would develop an air of proper investigation on the part of the officer, and would assure us in the actual conduct of each analysis that the results were, in fact, correct, knowing full well that when questions of opinion were going to be required, we would have to go to court to review what he had done and to decide whether or not we were in a position to support that analysis or not, and often in the face of a rather rigorous cross-examination devised in the odd few cases by opposing experts. The program was designed to withstand this kind of attack and there has been no instruction on the matter. This has seemed to stand up very well across the years in Ontario and has been adopted in a few other jurisdictions.

Mr. SCOTT: I do not want to go into the Rabinowich objections today because I gather we may have him here and hear his own statements. But there was one article that came to my attention and I wonder if I might ask you just a couple of questions concerning it. Criticism in this treatise is that the breathalyzer does not, in fact, measure alcohol specifically at all.

Mr. SMITH: Yes. If one takes any one of several hundred organic chemicals and drops them into the ampoule the ampoule will, in fact, change colour; it reacts with these things. But when you get down to the kind of things that can be present in the breath of a living person, then you are restricted to ethyl alcohol, grain alcohol, wood alcohol or ether. Such things as paraldehyde which may yield small amounts of a substance which reacts do this owing to the extent of .01 per cent for a dose which would be as intoxicating as, say, .4 per cent alcohol. The material which is present on the breath of the diabetic in the acetone will not react under conditions used in the ampoule. There is another substance, acetaldehyde, which is produced when a person taking antabuse also takes a little alcohol; this produces such a small quantity that it would not be measurable on the instrument. Three things are involved: Methyl alcohol and ether can react as alcohol does. They are differentiated from alcohol because when the reading is taken, the sample is bubbled through the tube and you wait approximately 90 seconds and take a reading. You take another reading a minute later with that same tube without doing anything with it, you will get the same reading with ethyl alcohol but with methyl alcohol and ether you get remarkably increased reading. In this way those two substances can be differentiated.

Mr. SCOTT: I am told, for example, and you mention it in your book, that you cannot actually smell alcohol on a person's breath. What you smell are the by-products in the mouth as the result of the use of alcohol.

Mr. SMITH: That is right. It is interesting to try this by drinking pure laboratory alcohol, dilute it, of course, to this concentration, as I have done.

Mr. SCOTT: In studying this matter, I must confess it gets one away out of one's depth, that is why we are glad to have you here; but it is suggested that there is no known test that can identify ethyl alcohol as a chemical in the breath. Would you disagree with that?

Mr. SMITH: I would. I think I have outlined the circumstances by which the inference is so strong that this is ethyl alcohol, that we did not have to consider any other substance. Again, you see I am avoiding an absolute.

Mr. SCOTT: You are not saying that you assume it is ethyl alcohol because you do not know what else it is?

Mr. SMITH: No, on the contrary. We have tested everything else; it is the only thing that does react in this way.

Mr. SCOTT: That is all I wanted to ask, Mr. Chairman. Thank you.

I was going to ask you, so much material has come in today for us to read over is it possible that we might be able to call on these witnesses again?

Mr. SMITH: I would be very pleased to come back at any time. I feel that it is a very important matter to all of us, and should there be evidence given contrary to that presented today, and any lingering questions which you may want to have brought up by way of rebuttal, I would appreciate coming again.

Mr. TOLMIE: You touched upon this a little while ago. Section 222(2) states "in venous blood of a person as conclusive". Now to be absolutely accurate and safe, would the sample not have to be taken from the blood, based on the fact there is evidence to the effect that breath and blood readings are not always identical? This would presuppose that these would be identical in order for this section to be valid, would it not?

Mr. SMITH: I would think that in section 2 this could be generalized by saying whatever level in blood, and then this leaves it open to translate the breath test into terms of blood, or collateral use of the urine test into blood or blood itself. We are not getting at venous blood when we are using breath tests. The blood that really matters is that which is going to the brain carrying the alcohol with it, the person's behaving toward alcohol, that relationship, the arterial blood matters.

Mr. TOLMIE: So the word "venous" perhaps could be taken out or some other substitution made?

Mr. SMITH: I think it could be deleted. It does not make good technical sense to leave it there when you are speaking about blood tests.

Mr. TOLMIE: I have just one final question and this is, perhaps, a general question, directed to whoever would like to answer it. I realize that the whole purpose of the breathalyzer test is to register convictions; perhaps make it easier for the police to convict a person basically; it is a scientific means of evidence. Is the philosophy behind this that the certainty of a conviction will deter people from drinking. In other words, people who will be going to parties and drinking, will they think in their own minds now that there is a certainty of being convicted because of the breathalyzer test, and I will desist from drinking. Is this the purpose of it?

Mr. SMITH: I would think so.

Mr. TOLMIE: How effective do you think this will be?

Mr. ANTHONY: When there is no means now to detect the presence and you are introducing a means which is assuring the detection of the presence, it will be 100 per cent effective as far as the individuals are concerned because now, as

most of us know, we say, those of us who may drink and drive after a party where there is usually a few drinks, "we personally feel that we are all right to drive". Secondly, most people feel that they do not stand much of a chance of being stopped in any event. If they were they could assure the officer that they were not in an impaired state. But the fact that there is a machine that will measure with certainty the degree of impairment, there is not much chance of fooling anybody whether or not they were impaired or affected as some people who have a high tolerance have got away a great many times by the fact that they could put on a pretty good show when stopped. There are many cases where we have not prosecuted because the physical evidence available is not there to support the charge in the courts. Yet we are sure, almost positive, that the man was in fact impaired, particularly in cases where a man has been prone to motor vehicle accidents. I cannot overstress this because if the man is involved in a motor vehicle accident and even if he did not sustain any serious injuries, a pathological defence is available to him which almost precludes conviction period, because the possibility of any sort of concussion or shock might produce symptoms to impairment or intoxication. The only way you can show that the symptoms he displayed at the time of the accident were not those of shock or concussion would be by introducing evidence of actual blood alcohol concentration at the time, which would preclude this rather large scapegoat which is being used at present by departments, particularly on the part of the people with whom we are concerned. The ones who have been involved in the accidents, who are involved in the fatalities or the injuries, because once they are involved in a physical collision the courts are most reluctant to convict on physical evidence alone, because there are so many contributing factors which come into effect and play here, once the body has been in such an accident—

● (5.30 p.m.)

Mr. TOLMIE: I realize there is a greater certainty of conviction. The point I suppose you are trying to make is that would it deter me, for example or you, or the ordinary person because they feel that there is a greater certainty of conviction because of the added value of the breathalyzer test?

Mr. ANTHONY: I think it would be sheer speculation the same way as when we were discussing here whether or not an increase in punishment is going to further deter people from driving. If you increase the minimum penalties or make punishment greater, is this going to deter. It is common sense speculation that it will, but it certainly is only guesswork at this point because we do not know. I think the results in Sweden and in the European countries has shown that it will.

Mr. TOLMIE: That is the point I just wanted to make. Do you have available any statistical evidence to show that there has been improvement since the breathalyzer tests have been introduced.

Mr. ANTHONY: In those countries?

Mr. TOLMIE: Yes, in those countries.

Mr. ANTHONY: Where it has been used for a while, yes, because in Canada, although we have legislation in five provinces, only one province has used it for a period of time, and the frequency with which they have used this legislation is

a little uncertain at present. I am not sure as we have no figures on that. All the other provinces are starting but none of them has used it for any period of time, so we cannot say what it would be in Canada or what effect it would have.

Mr. TOLMIE: No, but it would be helpful if we could get evidence of what happened in other countries.

Mr. RYAN: Mr. Chairman, I have a related question.

Mr. SMITH: May I add something to this one? I think, too, we are forgetting about the fellow who has actually had the one or two drinks and needs some means of proving this or the fellow who is, in fact, sick. These come up frequently enough and this is the orientation of our law that 100 guilty people get off than one innocent person be convicted. These people amount to five per cent of those who are picked up and examined and tested. I think these are a very important group with which we should deal.

Mr. RYAN: May I ask a question? A man is driving an old car with muffler trouble and there is carbon monoxide coming into the car. Can it give these symptoms that you have described?

Mr. SMITH: It can give the symptoms but the tests would be negative.

Mr. RYAN: Thank you.

Mr. MATHER: Mr. Chairman, just on the point raised a minute ago about what we could presume to be the effect on drinking drivers if we passed this sort of mandatory legislation. I think it might be useful to remember that earlier today we had testimony, you will recall, to the effect that in Ontario something like 25 or 30 per cent of people involved in accidents and suspected of being impaired declined to take the breathalyzer test because it is on a voluntary basis. Of that 30 per cent who declined to take the test a high percentage apparently are the hard core drinking drivers who are experienced enough to know that they do not have to take the test. I think it is pretty obvious that if they know they have to take the test, it would surely have a beneficial effect on sobering up that type of driver.

Mr. BOWKER: The remark I was going to make was in keeping with the ones made recently and the earlier one on the question of whether an offence such as we are talking about should be regarded as a minor one or not. They are all tied in. I would express this opinion. I think the bulk of the people are law abiding; I think there are a great many people, I would not attempt to guess the percentage, who observe the speed limit because it is the speed limit; but it only takes a small fraction who do not take that view to do a great deal of damage, and for many people, the mere creation of the crime with a small sanction might serve the purpose. However, we are as concerned about the other ones as well; they are the hard core. Speaking for myself, I would not think an offence such as we are talking about now, whether it is related to impaired driving, as it is in this bill, or whether it is a completely separate offence, as we were talking about a little while ago, should be regarded as a minor offence at all. I would think it should be regarded as something that Parliament has shown it takes seriously so that there would be a real motive for people who are not prepared to obey the law just because it is there would think twice before they violate it.

Although I cannot speak for the sponsor of the bill, I would think in looking at these proposed penalties that the sponsor does not regard it as a minor offence either; I think I would not, anyway.

Mr. SCOTT (*Danforth*): I have one last question. It is not really important. You have expanded your face a little bit; you wanted a general offence of driving at some prescribed level and then mandatory breathalyzer tests in all cases. You are suggesting that the officer would have complete discretion to decide upon the admission of the test?

Mr. BOWKER: On the admission of the test?

Mr. SCOTT (*Danforth*): Or the giving of the test.

Mr. BOWKER: And whether he would take the test or not?

Mr. SCOTT (*Danforth*): No. The officer merely makes a judgment that he thinks the person may have been drinking and then they are required to take a test.

Mr. ANTHONY: Yes; on reasonable and probable grounds to believe the man is influenced by alcohol and then he would request the test.

Mr. AIKEN: May I ask a supplementary that I have been wondering about, too. What, in practical terms, would such an offence do to the policeman who decides that this person or that person may be impaired or may have been drinking. I am wondering if this may open up a complete new field where the police may stop any vehicle at any time and demand that the driver take a test. Would we not have to require that policeman have some reason to believe that an offence has been committed. This has been bothering me all day, and I could not put it into words, but if we do create such an offence and there are no outward symptoms and presumably there will not be in a lot of these cases, it is going to result in the police stopping at random people in the same manner as they stop them and ask them for their registration.

Mr. ANTHONY: I do not think you can legislate in the area of application of it so much but you have to leave a great deal to those who have been entrusted with the enforcement of your laws to see that they are enforced as you designed them. If there are encroachments the courts are usually the first ones to bring it to the attention of those responsible for the administration of justice in the province, namely the attorney general's department, but, I must point out, that the provisions now in the Criminal Code do not preclude the police officer from stopping every car on Wellington right now and checking the driver for impairment, even on the pretense of stopping them for a check on licenses, but at the same time, of course, he is also observing him for the other.

They do not do it because, firstly, there are not enough police officers available in this country to stop all the cars. If it was so, then we would have an answer to the suggestion so often put forth, why do the police not stand in front of the beer parlours at 11 o'clock and test these drivers when they come out, because everybody knows; you see them coming out and getting in their cars, why not get them there! I would hate to think of how many beer parlours there are in Toronto but I am sure there are not enough policemen to cover even the parking lots let alone each person who walks out under the influence. The chance of this type of application of the law is very slight because of our limited enforcement.

Mr. AIKEN: But I presume also that policemen who did such a thing without any reasonable cause might find themselves in civil difficulties.

Mr. ANTHONY: Yes, and the people, no doubt, if they were stopped without cause, and they might very well because of some suspicious manner in which they operated their car; for example, people sometimes drive very slowly at night; and at 2 a.m. in the morning, the police could suspect that he is probably winding his way home after a party; he will stop him and ask him where he is going, and if everything is fine, he goes on. But sometimes this in itself brings about complaints from citizens who feel they have been stopped unjustly, and perhaps they feel they have been accused of something; but they have every right to complain and they certainly do complain and these matters are dealt with by either the Attorney General's Department or the department responsible for the police officer's conduct.

Mr. AIKEN: Thank you. It was a point I wanted to have clear and I think there is a reasonable answer to it.

Mr. RYAN: I would like to ask Mr. Anthony if he thinks it is feasible to put a time limit on the length of time a suspect could be held after being picked up on reasonable and probable grounds and tested twice, say.

Mr. ANTHONY: If a charge is not being laid he has to be released right away. If you are thinking of a time limitation between the time he is brought in and tested on an impaired driving section, of course, he would in all probability be arrested on the offence itself, just on the fact that he had certain appearances of impairment. However, if we get to a lesser level of blood alcohol where the person may not show those physical symptoms, this is a different problem.

Mr. RYAN: From the point of time when he could be let out on bail, I suppose.

Mr. ANTHONY: Yes, and there would also be a point between this Committee and the Department of Justice as to how that section would be worded to give the police officer the authority to hold a man for testing, because this type of test that we are talking about here is not a field test which can be done on the spot without inconvenience.

Mr. RYAN: I am predicating it on the dual test—

Mr. ANTHONY: Yes. Two tests, fifteen minutes apart and also you have to take the man from the scene where he was first checked to the place where the test is being conducted. If the man says, "I am not going", the only authority you have presently to take the man is to arrest him. That is the pretence but if we are going to enforce a lesser level and the grounds for suspecting the man may not be so strong for the police officer to execute what he might consider an on the spot arrest.

Mr. RYAN: Could you make a reasonable length of time suggestion to the Committee?

Mr. ANTHONY: Dr. Ward Smith would know more about that. I think in the city of Toronto, traffic being what it is, it would probably be a three hour period I would say from some of the spots in rush hour Toronto to a place where he might be tested and given time to have his two tests, or even more.

Mr. RYAN: Are these tests not all done within an hour to an hour and a half in Toronto?

Mr. SMITH: Outside Toronto it may be different, depending upon—

Mr. RYAN: Is there an outside time limit that you could recommend, Dr. Smith?

Mr. SMITH: Three to four hours.

Mr. ANTHONY: Might I interject. In Saskatchewan the legislation says the person shall get a test. Now, it presumes the fact that the test shall be given and it is up to that person to comply with the law by going voluntarily to the station—he is not under arrest—to submit to a test. They try to make the time involved as short as possible; he is not under arrest. If once tested at the station and the officer is satisfied that he does not fall within the category of what a person might presently be considered to be impaired, he is not released because he was never in custody. He went voluntarily and he leaves voluntarily. That is the way they have set it up to avoid the problem of trying to set it out so that a policeman has to arrest him. The law says a person shall submit to a test and, of course, they know that the test can only be performed in the police stations or in the building where the lab is. So the person is required by law to go to have the test regardless of where it might be. He is not arrested; it is a requirement of law. Failure to do that—

Mr. RYAN: In effect, it is a kind of arrest, though.

Mr. ANTHONY: No, because if he does not go and as pointed out in your bill, failure to do that means that he has committed an offence.

Mr. AIKEN: And arrest him for that.

Mr. ANTHONY: They might arrest him for failing to do it, but there is no arrest in essence because the requirement is that he must give a test without spelling out where the test might be. He must give a test and he would, I assume, receive instructions from the police officer as to where the test would be performed. I imagine eventually when the technicalities are worked out you might have to say: "You will give a test without delay", because some people might come in tomorrow and be tested.

Mr. SMITH: It is a rather self-limiting thing because all the time that this is going on the man is removing alcohol and the longer the elapsed time, the less alcohol level there is going to be found in the subsequent test.

Mr. RYAN: Yes, but doctor, would your evidence not be retroactive? In effect, you could say the average person passes so much per hour through the breath, the urine and so on and, therefore, he must have had so much at the time of the accident?

Mr. SMITH: When you try to become retroactive about it, then you do get into real difficulties and probably today 50 per cent of the cross-examinations are on this question of retroactivity.

Mr. RYAN: Reconstruction is difficult?

Mr. SMITH: You have to adopt or infer or suggest the rates of removal which are minimal rather than average or maximal. It is always in favour of the accused.

Mr. McQUAID: That suggestion of yours, doctor, though that it works for the benefit of the accused is the thing that is bothering me. Suppose this man has had his last drink—that is his seventh drink, the one required to put him up to 10—just four or five minutes before the accident. Now, the alcohol in that drink did not contribute to the accident. You take him to the police station, a period of an hour or so has elapsed, this is enough for the extra drink to go down into his system and show on your test—

Mr. SMITH: That is why I want the urine test because then I can detect that situation. The urine test is a collateral piece of information.

Mr. SCOTT: Do you think for the breathalyzer to be accurate there should be a compulsory urine test along with it?

Mr. SMITH: In this situation, where there is this possibility, I would like to see the officer being able to ask for additional information to cover such a point because in any testing situation it is always some time after the actual driving. There is the problem in your mind always of adapting the calculation to the time of driving. Without that urine test we really do not have any factual basis for it. We can go on the behaviour of the person during this time interval; if he is getting better during this time interval it is inferred that he is getting rid of his alcohol and sobering up. But there may be other reasons for it. He may be recovering from the shock of the accident or the arrest and so forth. You really do not have definite evidence as to what his alcohol level was at the time of driving and you need, in many instances, to have some collateral information on that. This is the way we use the urine test.

Mr. MATHER: It is available now, is it not, on a voluntary basis?

Mr. SMITH: It is available now on a voluntary basis. I might point out, however, one thing. We are dealing now only with the area where the person is on the borderline 10. For the most part, my experience has been that many of them are in the 15, 16 range and the hour and half interval has had very little effect on that because an hour and a half would give them only a certain increase which would still put them well above .10 even if they had consumed the last drink just two minutes before the accident.

Mr. ANTHONY: It has been very interesting how many of them, when they get to court, have very bizarre drinking patterns; they have consumed ten ounces of whisky just ten minutes before the accident. This was not really in their system at the time of the accident but it is there at the time of testing and I have gone through many interesting cases with the person that you refer to where this has been the defence.

Mr. MATHER: Maybe we need a saliva test?

Mr. FOREST: Maybe this question was asked but I regretfully came in late. If this became law, doctor, could the person carry some kind of a pill that would neutralize the effect of the alcohol before he takes the breathalyzer test?

Mr. SMITH: Unfortunately not. Chlorophyll, for example, will get rid of the smell of the alcoholic beverage but will not affect the alcohol content in his system. We have not yet found such a pill.

The CHAIRMAN: Are there any more questions? Then I would like to take the opportunity of thanking our very distinguished witnesses for being with us

today and for the wealth of information with which they have supplied us. We have had it from the scientific point of view; we have had it from the civil rights point of view and we have had it from the legal enforcement point of view. I think it is a wonderful contribution to the efforts of this Committee and on behalf of the Committee I would like to thank you all, Mr. Anthony, Dr. Ward Smith and Dean Bowker.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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and/or a translation into English of the French.

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 9

THURSDAY, JULY 7, 1966

Respecting the subject-matter of

- Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles)
Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles)
Bill C-87, An Act to amend the Criminal Code (Impaired Driving).
Bill C-105, An Act to amend the Criminal Code (Insanity)
Bill C-118, An Act to amend the Criminal Code (Negligence in operation of motor vehicles)
Bill C-176, An Act to amend the Criminal Code (Insanity at time of trial)
Private Members' Notices of Motions Numbers 26, 31 and 38

WITNESSES:

Mr. John Munro, M.P. Sponsor of Bill C-176; *From the Ontario Department of Health*: Mr. B. Swadron, Director, Study Project on Mental Health Legislation; Dr. B. Boyd, Superintendent, Ontario Mental Hospital at Penetanguishene.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest
and

Mr. Aiken,	Mr. Honey,	Mr. Otto,
Mr. Bell (<i>Carleton</i>)	Mr. Laflamme,	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Scott (<i>Danforth</i>),
Mr. Chrétien,	Mr. MacEwan,	Mr. Tolmie,
Mr. Fulton,	Mr. Mather,	Mr. Trudeau,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Wolliams—24.
Mr. Guay,		

(Quorum 10)

Replaced Mr. Asselin (*Charlevoix*), Thursday, June 16, 1966.

CORRIGENDUM (English copy only)

MINUTES OF PROCEEDINGS AND EVIDENCE No. 8—Tuesday, June 7, 1966

In the evidence—page 178, line 10, should read:

“... 1956 ...” rather than “... 1965 ...”

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, June 15, 1966.

Ordered,—That the subject-matter of Bill C-105, An Act to amend the Criminal Code (Insanity), be referred to the Standing Committee on Justice and Legal Affairs.

THURSDAY, June 16, 1966.

Ordered,—That the name of Mr. Grafftey be substituted for that of Mr. Asselin (*Charlevoix*) on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, July 5, 1966.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 9.30 A.M. THIS DAY, the following members were present: Messrs. Cameron (*High Park*), Forest, Grafftey and Mather (4).

Also in attendance: Mr. John Munro, M.P., Sponsor of Bill C-176.

At 10.00 a.m., there being no quorum, the Chairman, Mr. Cameron, postponed the meeting until Thursday, July 7, 1966, at 9.30 a.m., or to the call of the Chair.

THURSDAY, July 7, 1966.

(11)

The Standing Committee on Justice and Legal Affairs met this day at 9.50 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Guay, Honey, Laflamme, Mather, Ryan, Scott (*Danforth*), Trudeau (10).

Also present: Mr. Baldwin, M.P.

In attendance: Mr. John Munro, M.P., Sponsor of Bill C-176; Mr. B. Swadron, Director, Study Project on Mental Health Legislation, Ontario Department of Health; Dr. B. Boyd, Superintendent, Ontario Mental Hospital at Penetanguishene.

The Chairman introduced Mr. Munro who introduced Mr. Swadron, and Dr. Boyd.

Following a statement by Mr. Munro explaining Bill C-176, of which he was the Sponsor, he was questioned by the Committee.

Mr. Swadron made a statement, during which he read into the evidence a letter from the Honourable A. A. Wishart, Attorney-General of Ontario to Mr. John Munro, M.P., commenting on Bill C-176. Mr. Swadron distributed to the Committee an outline of his presentation.

Following the Committees questioning of Mr. Swadron, Dr. Boyd was invited to make a statement.

The Chairman, Mr. Cameron, was called away to another meeting and Mr. Reid Scott (*Danforth*) was invited to assume the Chair as Acting Chairman.

At the completion of the questioning of the witnesses, the Acting Chairman thanked Mr. Munro for his presentation, and Mr. Swadron and Dr. Boyd for their valuable contribution.

Moved by Mr. Ryan, seconded by Mr. Aiken,

Resolved,—That reasonable living and travelling expenses, in accordance with the scale of expenses approved by Mr. Speaker, be paid to Mr. W. F. Bowker, who appeared before this Committee, June 7, 1966.

At 11.55 a.m., the Acting Chairman adjourned the meeting to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, July 7, 1966.

The CHAIRMAN: Would you please come to order. We have, besides yourself, Mr. Munro, two other important witnesses.

Mr. MUNRO: Mr. Chairman and members, I am going to be very brief. I have with me Mr. Barry Swadron, a lawyer presently with the Ontario Department of Health in charge of their mental research division, and a noted author on the law pertaining to insanity. He is here today to give further background into the merits of this bill and also to give evidence as to certain refinements and improvements that could be made in this bill.

Along with Mr. Swadron is Dr. Boyd, who is Superintendent of the Ontario Hospital at Penetanguishene, Ontario, in which hospital there is a maximum security unit; this hospital is also for the criminally insane. Dr. Boyd is a graduate of the University of Toronto, 1945. Prior to taking the post as superintendent of the Ontario Hospital at Penetanguishene he was at Sunnybrook Hospital, the Ontario Hospital at St. Thomas and the Ontario Hospital at Hamilton. He is a Fellow of the American Psychiatric Association; he is a certified psychiatrist and he is the author of many articles on forensic psychiatry.

Both gentlemen have taken a very active interest—it is part of their lives, really—in legislation of this kind and they have been good enough to come down and give the Committee their views as to the necessity for changing the law in this respect. I think their evidence and testimony would be far more helpful than anything I could say, other than to refer members of the Committee to the background brief on the Farewell case, which was one case, really, that brought home to me that some change was necessary. In that particular case the accused was a mentally retarded boy who was charged with rape and, of course, under the present law the question of fitness to stand trial was the preliminary issue to be determined. It was determined that he was not fit to stand trial; he was incarcerated and evidence could not be adduced, therefore, that might point to the boy's innocence. There was evidence of a fairly convincing nature, body emissions, blood tests and so on that could point to the essence of the case that he was not, in fact, involved in the particular crime.

There are many other examples where there could be considerable improvement in the law in this respect. In the submission it sets out and makes reference to the Farewell case; it also points out the amendments that were made in England with respect to this matter, which allowed the judge to postpone the issue of fitness to stand trial, allowed the Crown to put in its case to establish whether it was a fact that they had a *prima facie* case. The suggestions in this bill, for which you will hear refinements, goes a little further and granted the judge the option, if you like, of calling witnesses as to

identification and alibi, which are pretty fundamental issues in any trial. It is felt that this will overcome one very serious injustice. Under the present law a person under these circumstances, having the preliminary issue of fitness to stand trial being first determined, and having it determined that he is unfit, is incarcerated, the ultimate determination as to his guilt or innocence is indefinitely postponed and may very well be indefinitely postponed, and he has a charge hanging over his head for which he is never really convicted or acquitted. It is hoped that amendments to the law will cure this serious defect.

I think, Mr. Chairman, with those few preliminary remarks, Mr. Swadron would be most helpful at this stage.

The CHAIRMAN: Thank you very much, Mr. Munro. I think Mr. Scott would like to ask a few questions.

Mr. SCOTT (*Danforth*): I have one or two very short questions.

First of all I would like to congratulate the member for bringing this important matter to the attention of the Committee.

In looking at your outline I get the impression that you have restricted the bill to the question of fitness at the time of trial. To most of us the real problem is the mental condition of an accused at the time of the commission of the crime and some revision of what a lot of us think are the antiquated rules covering that. I just wondered whether you had given any consideration to this and why you would restrict it merely to the mental condition at the time of the trial rather than dealing with the broader problem of modernizing rules as to the time of the crime itself.

Mr. MUNRO: I agree with you on that, Mr. Scott. I felt that that whole subject matter opened up another whole area for consideration which could be the subject matter of another private member's bill to go into; it is certainly worthy of a good deal of attention on the part of the Justice Department and the government. But, intentionally, I brought forth a bill restricted to this one point.

Mr. SCOTT: You mean the subject matter that is before us.

Mr. MUNRO: That is right.

The CHAIRMAN: Is there anyone else who would like to ask Mr. Munro any questions before we call Mr. Swadron?

Mr. Swadron, we would be glad to hear from you now.

Mr. B. SWADRON (*Director, Study Project on Mental Health Legislation, Ontario Department of Health*): Thank you, Mr. Chairman.

Perhaps in my presentation I should describe the nature of the issue of fitness to stand trial at the outset. It does relate to the mental condition of the accused at the time of the trial and for the purposes of the trial, and it is something which is artificial and relates only to the way in which we try individuals. The principle has always been that it is unfair to place a man on trial when his mental condition is such that he is unable to make full answer and defence. There seems to be a lot of confusion which would make some people believe that a person who has been found unfit to stand trial has been implicated in some way and is guilty, or that he has had something to do with the offence charged. That is true in the case of a person who is acquitted on

account of insanity; in other words he is found to have committed the act with which he is charged, but he is excused from criminal responsibility. Again I mention that that is not the case with the finding of unfitness to stand trial.

Another very important factor is that a finding of unfitness to stand trial is not equivalent to a finding by physicians that a person requires mental hospitalization. Perhaps Dr. Boyd would mention something about that.

Now the procedure following a finding of unfitness to stand trial is clear. The person is automatically detained, probably in a mental hospital. It is actually at the pleasure of the Lieutenant Governor of the province, and the Criminal Code does not specify the place of detention but, invariably, it is in a mental hospital. There is no appeal against a finding of unfitness to stand trial and when a person has been so found there is no procedure whereby as of right he can get his trial heard; he cannot get back to court by any proceeding on his own motion.

I think it is fairly clear that the current law must be re-assessed, and in the editorial in the *Canadian Bar Journal*, which has been circulated, the case for amendment is set out there. There are a number of problems encountered by hospital authorities when they receive persons who are unfit to stand trial and I am sure that Dr. Boyd will have something to say about that.

Now in the United Kingdom in the 1950's there was a conflict of authority as to whether a trial could proceed if a person were unfit to stand trial, the argument being that the defence might have within his battery a good defence, or the prosecution might not succeed in proving its case. There were cases wherein the trial of the fitness issue was postponed until part of the trial on the merits of guilt or innocence would be determined. Those cases were not always followed and it was decided that it had to be considered by the criminal revision committee in the United Kingdom and if there were going to be any definite principle developed it would have to be in legislation.

Now the very issue was considered by this committee and the majority of the members were in favour of postponing the issue of fitness to stand trial and they came to the conclusion that there were four possible courses to follow. I have set these out in the presentation.

The first alternative was that it should be postponed up until the opening of the case for the defence. That would mean that the prosecution would submit all its evidence and it would be open for the defence to move for a directed verdict on the basis that the Crown had not proved a *prima facie* case. Ultimately, that was the course that was selected by the majority of the committee and adopted into legislation in the *Criminal Procedure (Insanity) Act, 1964*.

The second alternative was up until any time before the verdict, and there were several arguments against that possibility; they were mainly procedural arguments. There was some worry that the jury might ultimately have too many questions to decide at the time the verdict was to be rendered. They might have to decide whether or not the person was fit to stand trial, whether or not he committed the act with which he is charged and also, a third possibility, whether or not he would be acquitted on account of insanity if it were found that he had done the act with which he was charged.

The third alternative was to proceed with the trial in the ordinary manner and come to a verdict, and then after the verdict decide whether or not the defendant had been fit to stand trial. That course was criticized inasmuch as it would be possible that the man would be convicted, and even though the trial of the fitness issue would be considered after that they felt that it would be an unfortunate course to label a man as guilty if it turned out that he was unfit to stand trial.

The fourth course was to try the issue of fitness as soon as it arose but proceeding with the trial in any event, in other words, if the question of fitness was raised they would determine whether he is fit, and even if he is unfit they will continue with the trial to see whether or not he committed the act. That course was felt undesirable inasmuch as perhaps for a large part of the trial they would be trying a man who had already been declared unfit to stand trial. As I mentioned before, the first course, the permissiveness of postponing the issue of fitness up to the opening of the case for the defence was adopted.

Now applying the considerations with which I have just dealt to the bill in question here, Bill No. C-176, I think there is very little room for argument that the bill is unsound; it is clearly sound. In dealing with perhaps hundreds of people who are interested in this subject I have found no one who would deny the validity of the principle in the bill.

The bill itself goes a little further than the United Kingdom situation; it states expressly that the trial judge may call, during the case for the prosecution, witnesses who would tend to prove either the defences of identification or alibi, and this would be during the presentation of the prosecution's case. In that respect the bill goes further than the British system.

Now it seemed to me, as far as limiting the defences which could be introduced, that there was no need to do that, and I thought of one particular defence that was not included in the bill which certainly could be, and that is the defence of self-defence. Perhaps I will take a minute to describe the case of which I have knowledge.

Two mentally defective persons were loading wood on a cart and accidentally a piece of wood hit one of the defective persons who thought that it was the other person who had hit him and he thereupon attacked whom he thought was his assailant. In self-defence the one who was attacked killed the other person, and being that these persons were defective I think perhaps had there been a charge it would never have got to the criminal charge stage. Had there been a charge he might well have been found unfit to stand trial and I feel that he would have had a good defence of self-defence. Therefore, I think the bill could well be expanded in that respect to include self-defence and I feel, furthermore, there is no need to limit the defences which can be offered. I think it would be well to express this amendment to have a procedure which would be equivalent to the Criminal Code and provide for all defences as in any other case.

Now in regard to the point of the trial where it would be permissive to postpone the trial of the fitness issue I would submit that there is a strong argument to postpone it until all of the evidence is heard.

An hon. MEMBER: On both sides?

Mr. SWADRON: Yes, sir. That would include reply evidence by the prosecution, if there were any. It would allow the possibility, and include the principle in the British bill, where a directed verdict of acquittal could come after the evidence for the prosecution; it would not take away from that. It would allow the opportunity for the defence to give his complete battery and then, after all of the evidence is in and there is a little contention as to this point, I must admit that there will be procedural difficulties—of that there is no doubt. But the over-all principle is that if we have sufficient flexibility we might be able to accommodate all cases. Another overriding principle is the discretion in the judge; he would always have the opportunity to call for the fitness issue at any time if it appeared that there were procedural difficulties. I would just like to leave the door open to continue to this point in a case where it is indicated. After all the evidence has been submitted, if the issue had not been called for up until that time, I would make it mandatory for the issue to be tried. If the person were found fit to stand trial the trial would proceed in the ordinary fashion and all of the evidence at that point would have been in and we would not have been at a loss for evidence. If he were found unfit I would allow the court to instruct the jury that this trial had been unfair from the point of view of the accused and therefore we cannot convict him, but it is open to you to acquit him if you feel that there is a reasonable doubt as to his guilt, even though the trial had been crippled to a certain extent—it has been crippled against the accused but the prosecution has had useful opportunity to present his case and it might well be that even though the accused has been at a disadvantage he may be entitled to an acquittal.

Now there are difficulties involved with that; it has been set forward that once having found a man unfit to stand trial the jury would be reluctant to bring about a verdict which might involve his release because they might feel that the finding of unfitness is very close to the fact that he is mentally ill and he is perhaps charged with a serious offence and they may be reluctant to bring in that verdict. It is my personal opinion that with a proper charge to the jury that this could be overcome, and I would not leave the two issues to the jury at the same time. In other words, I would ask them to find out or to determine whether or not he is fit to stand trial. If they do bring in a verdict of unfitness then they will be charged on the second question and it would be made clear at that time that it is not open to convict him but only to acquit him.

As an advantage, if all of the evidence were on the record, I think ultimately the hospital authorities would be in a very much better position than they are now. It so happens that many persons with respect to whom the trial of the fitness issue is tried at the outset of the trial are sent to hospital, and the superintendents of the hospitals have virtually no reliable evidence upon which they can judge what the proper course would be with respect to the individual. Perhaps Dr. Boyd will mention something in that regard.

Mr. SWADRON: Of course all of the evidence would be in for later disposition, if necessary. In some cases where a man is tried perhaps 10 or 15 years after the occurrence, if he is sent back to trial after having been found unfit many years before, often the case for the prosecution will have been lost and witnesses will have died, and many problems would be encountered in that respect.

I should mention that Ontario has had difficulties with the administration of these problems so much so that certain informal hearings were arranged to consider the cases of persons who were found unfit to stand trial, but where there was a claim that the person was innocent and he would not be detained in a mental hospital were it not for this outstanding charge, because detention in a mental hospital does not depend merely on the medical aspect; it is a question of the person's conduct and dangerousness as well.

Now I thought perhaps I would just spend two or three minutes on the second section of the bill, which deals with appeal. When the appeal appears in the British Statutes it sets forth the grounds of appeal and it mentions that there would be an appeal as of right against the question of law and under conditions if it were on other grounds. I think this is an important principle that must be followed in accordance with our own Criminal Code and that those conditions should be added along similar lines to ordinary appeals against convictions or acquittals.

Now that deals with the question of appealing against an unfitness finding. It so happens that in the wording of Bill No. C-176 there is mention made of an appeal against a special verdict. Now a special verdict in that sense means an appeal against an acquittal on account of insanity and we do not have such a right of appeal; therefore the wording as mentioned in the bill is inapplicable to Canada. That wording was copied from the British bill but it is significant to note that in another section of the British bill they created an appeal against an acquittal on account of insanity and therefore they made reference to it in their bill which we copied. Since it has been mentioned within the scope of this bill I would suggest that there is a strong argument for an appeal against an acquittal on account of insanity and that should be inserted as part of this bill; it would be a logical part of it.

I think perhaps that is all I have to say.

It has been brought to my attention that the Hon. Mr. Wishart, Attorney General for Ontario, has sent a letter in respect of this bill and perhaps I will read the pertinent portions.

I have now had an opportunity of pursuing this bill and, as I have already indicated, the principle is, in my own opinion, a sound one. However, my information is to keep to an absolute minimum any changes which would be made in the procedure at the trial, and along these lines I would suggest that the trial judge, once having postponed the trial of the issue of fitness to stand trial, should then follow the usual course of considering, at the end of the Crown's case, whether there should be a directed verdict of acquittal. If the presiding judge does not direct a verdict of acquittal then he could allow the defence counsel to adduce the evidence in support of particular defences which would be specified by the judge. When this evidence was completed the jury would then be asked as to whether it had any reasonable doubt of guilt at that particular stage. As you know, our whole procedure is developed in accordance with our body of law to reach the present stage which, I feel, is an excellent one designed for the best interests of the accused and the public. In introducing these provisions for the particular problem I would be loathe to see

any drastic revisions of criminal trial procedure if the point could be accomplished in a manner more accommodated to our trial system.

The CHAIRMAN: Thank you very much, Mr. Swadron; that was very interesting. Now there are a few questions some of the members would like to ask you. Mr. Scott, do you have one?

Mr. SCOTT (*Danforth*): I was going to ask if Mr. Wishart's letter could be part of our minutes.

The CHAIRMAN: Well, you can put it all in, but the body of the letter is on the record now.

Mr. SWADRON: Yes; actually I read the complete text of the letter. I had mentioned they were the pertinent portions.

The CHAIRMAN: Are there any questions of Mr. Swadron?

Mr. BALDWIN: Now on the question of insanity, the wording of the bill—and this is a point which occurred to me right away—is, in 524 (1): "Where on the trial of a person the issue arises, at the instance of the defence or otherwise, whether the accused is on account of insanity . . ." When I first looked at that I thought this is not a very happy word to use because we might be driven back then to the definition of insanity, which appears in the Code and which, of course, is very drastic. On the other hand I am looking at that particular section, and that definition is limited for the purpose of the section alone on the general issue. But there is some resemblance there and I am looking at this from two points of view; from the point of view that I was counsel defending and had raised this issue myself as to unfitness to plead, the type of insanity which I would hope I would be compelled to establish, or that the court or the jury would find, would be probably of a minimum kind, whereas if the Crown prosecutor or the Crown had raised this issue I would naturally expect that the degree of insanity which they would be compelled to prove would be a lot more substantial than the one I would be compelled to prove if I had raised it. Now probably in the course of time, and trial and error, the courts may evolve what they think is a fair test of insanity, but I notice that in the English statute they have used the words "under disability", and this has been interpreted, I imagine, over a period of time, to cover a situation where the accused has not the capacity to defend or to instruct his counsel. I think this is pretty well a test, is it not, which they take?

What do you see is likely to happen if the bill in this shape is adopted and the word "insanity" is left in in its present form without any further effort to either change it or refine it? What do you see is likely to happen in the course of time and trial of these issues as to what the courts would fix as being the meaning of insanity as used in this bill?

Mr. SWADRON: Thank you. Well, the criteria for fitness to stand trial of course has evolved over the years under the common law. I think that you have a very good point inasmuch as the jury is sometimes confused when in the same trial they might be considering the fitness issue and the question of criminal responsibility in that they mean, is the person mentally ill or was he mentally ill, and they might tend to equate the two different meanings of insanity, which is very unfortunate in a case perhaps where a man is the

subject of a trial of an issue of fitness and he is found to be fit to stand trial the jury might be reluctant to bring in a verdict of not guilty on account of insanity because they have already had a determination as to his mental condition. So I do think that the term could well be changed. I would note the very wording of the English section, if I might just read it here:

Where on the trial of a person the question arises at the instance of the defence or otherwise whether the accused is under disability, that is to say under any disability such that apart from this act it would constitute a bar to his being tried.

Now over the years that disability in England could have meant that the man did not speak English and there was not an interpreter, or he could be deaf and dumb and there was no sign language with which they could communicate to him. I think by and large all of those possible circumstances arising are doubtful and that even though it does not use the word insanity in the English act it is intended to mean his mental condition in relation to the trial. But I think that it is a point very well taken that the term "insanity" in section 524 of the Criminal Code could well be changed in this respect. I think perhaps why it was not changed was to leave the provisions of 524 untouched where possible and limit it to the terms of the amendment.

Mr. BALDWIN: Then at that same stage of consideration, the question arises as to the initiation of this particular issue and the burden of proof. I am judging that what probably would happen would be to the same extent as a general issue of insanity, that it would have to be established by probabilities rather than any discharge beyond any reasonable doubt. I think this is the issue in insanity cases generally and I suppose the same thing would apply here. Would that be your view?

Mr. SWADRON: Yes, I would agree with that.

Mr. BALDWIN: Yes. There is nothing said in the bill and I am taking it that this probably would be a judicial interpretation.

I have one more question and then I will vacate the field. I was very interested, Mr. Swadron, in the point you raised as to the stage at which the issue would arise and your suggestion that subsection (3) of section 524 as proposed in the bill should be enlarged so that any defence might be available on which the counsel for the accused could ask the judge to call witnesses. The point that strikes me from a practical situation, having in mind my own experience as counsel, would be that if this was tried before a jury and you hoped that you could rely upon the jury to find on the issue that there was unfitness to plead, this might well inhibit you in your relations with your client at the trial. Now a constant communication between counsel and a client at the trial is very essential to the proper conduct of a criminal action, and the two particular issues of identification and alibi are defences which can be raised and substantiated on the basis which does not at first blush require this communication between client and counsel; they are defences which, in order to establish them, you have access to other people. Now I would think that if I was defending a man on this issue on the possibility that if there is a finding against me on the issue of unfitness I might be then compelled to ask the same jury to

decide, on the same evidence, on the general issue, I might be in something of a dilemma, knowing that this evidence which is going in would be the evidence on which a jury might on the general issue of guilty or not guilty have to make a finding. This might inhibit me because if I had this constant communication with my client, which normally you would have, the jury would say well, this accused person is quite obviously well able to conduct his defence; he has the capacity to instruct his counsel and, therefore, *prima facie* on the plea of unfitness we are going to automatically find against him. I was wondering if it would be possible to find an intermediate stage here where certain specific defences, such as the two that are mentioned, could be made mandatory but, at the direction of the court, any defence of a kind which did not require this communication between counsel and client in the court, where the counsel takes initiation and goes to the judge—I mean makes an application to the court and says will you call a witness on this particular issue, might be determined by the judge rather than leave it open. It might put counsel in a very difficult position. Maybe I am thinking too much as one who has had a lot of experience in these things but it is a point that has occurred to me and I would like your view on that.

Mr. SWADRON: It seems to me that if the issue of fitness arises to the extent that we will be looking at these sections the judge will be well aware that that is a possibility, a very good possibility that he is unfit to stand trial, and throughout the course of the trial the judge could bear that in mind and it would be open to him to call the trial to a halt if at any time it were felt that it would be unfair to the defence. Am I correct in assuming that one of your statements was that if it was felt that the accused was unfit, if you were conducting the trial and you seemed to be getting instruction from him, that the judge will—or the jury will—

Mr. BALDWIN: The jury; I am not thinking of the judge—the view that the jury is going to take if counsel and the client are in constant communication and carrying on discussions. The jury I think are likely to hold that the accused is fit to stand trial if he is able to instruct counsel.

Mr. SWADRON: Yes. Well I am wondering whether on the fitness issue if the judge would make a point of bringing that to the attention of the jury, that we have been conducting this trial, in view of the purpose of this amendment, for better justice; it might have been that the person has been fit to stand trial and there has been some worry about that during the trial but now we have decided to call the trial to a halt to determine that very issue.

Mr. BALDWIN: I just saw that show the other day “Twelve Angry Men” about twelve jurors.

Mr. SWADRON: Yes, I agree that there are a lot of procedural problems involved.

Mr. SCOTT (*Danforth*): I was going to raise this issue but I had intended to wait for the other witness. It seems to me that the bill in its present form creates a view to limit, in dealing with the issue, unless you have a pretty clear spelling out of what you mean by insanity, because it seems to me every judge will make his own interpretation of what he feels insanity within the terms of the bill should be.

Mr. SWADRON: I would think that it is very clearly set out, although the criteria are not spelled out within the Code. It is very clear within the common law and I know of no recorded case within the last score of years where there has been any difficulty in determining what the test for unfitness to stand trial is and the reason it was not discussed here is because it was not felt to be a problem and there is no change contemplated by the bill. Do you wish me to go through the criteria?

Mr. SCOTT (*Danforth*): You may as well put them on the record.

Mr. SWADRON: Yes. I do mention in the editorial that in order to be fit to stand trial the accused must have the capacity to understand the nature and the object of the proceedings against him. I would split that into two criteria: He must know the nature of the proceedings, that it is a trial, and he must also know that they are directed against him; and he must comprehend his own condition in reference to such proceedings and he must have the mental condition to make a rational defence either personally or through counsel. Now there are other considerations involved which could be considered under those general criteria; one of them, would he be able to challenge a juror who is his arch enemy—that has arisen once or twice. But generally those ones which I have mentioned are the accepted criteria and while there might be confusion in certain people's minds as to what they are I would submit that they are very clear.

Mr. SCOTT (*Danforth*): The other point is the one Mr. Baldwin raised and I would like to go back to it for just a moment. In the trial of an issue of this sort as to the fitness it seems to me you are likely to end up with conflicting professional testimony. That is the Crown will call their psychiatric evidence which often is that the man is fit; the defence will call theirs which would be that he is unfit. Then you let the trial continue and the problem comes up where here they are watching the man every day talking to his lawyer, giving him instructions, and he does not hesitate; he carries them out. Is there not a danger there that the jury, when it comes to decide the issue, will make a relatively uninformed guess.

Mr. SWADRON: Well, sir, when you mention you would let the trial continue I assume you meant the person was found fit to stand trial because there is no scope under any of these recommendations or submissions for allowing the trial to continue beyond the finding of unfitness.

Mr. SCOTT (*Danforth*): I know, but you suggest that the finding can come at a later stage.

Mr. SWADRON: But once the finding of unfitness to stand trial comes it is at the end of all the evidence, I would still allow the opportunity for the jury to acquit him, but there is no continuation of the trial such as evidence of anything like that. The determinations would come one after another.

Mr. SCOTT (*Danforth*): There is something there that bothers me but I cannot put my finger on it.

Mr. BALDWIN: I think I should mention again, not on these issues here but on the point that you have raised, of a possible enlargement of the act, that their evidence is being led. Let us assume that the counsel for the accused after

the Crown has pleaded its case asks the judge to call witnesses pursuant to subsection (3) on any defence at all—on the main defence. Your suggestion is as to enlargement of (3)?

Mr. SWADRON: Yes.

Mr. BALDWIN: Yes, and the judge accedes to that request and calls a series of witnesses. There is the time relationship between the calling of these witnesses and the actual calling of the psychiatric witnesses on the issue of fitness or unfitness to plead.

Mr. SWADRON: Well I think on the issue of fitness to stand trial and the psychiatric testimony, the particular psychiatric testimony on the fitness issue would not be called until the issue arises.

Mr. BALDWIN: Yes, this is the point. The purpose of your suggestion is that it could be postponed until in effect the case that the accused would put in on his behalf would have been completed and at that time, then, the question of fitness or unfitness of the accused to plead would be dealt with by evidence. I think that what Mr. Scott and I had in mind was that during the course of the calling of the witnesses by the judge and the examination of those witnesses counsel may be well compelled—from time to time to have communication with his client and that will be obvious to the jury prior to the time that the psychiatric evidence has been called and there being a decision by the jury as to the fitness or unfitness to plead. Now this puts the accused, particularly the counsel for the accused, in a difficult position, when there has been a particularly damaging question asked by Crown counsel and he does not know the particulars, and he may need to re-examine or to cross-examine on that; his cross-examination normally would necessitate a conference and discussion with the accused in the court. This is bound to have some impact in the minds of the jury who will be called upon ultimately to exercise two functions: to decide whether or not the accused is fit or unfit to stand trial. If, having decided he is fit to stand trial it then will be called upon to decide whether he is guilty or not guilty. Now this is the point I am getting at. Perhaps it seems a little far fetched but I can see it happening; I think I can see it happening quite frequently.

Mr. SWADRON: I would just mention to you at this point that it is possible even under our present law to have the trial of the fitness issue at any time before verdict; this trial might have lasted for weeks, and at the end of the two weeks the counsel might get up and say "I feel that I would like a trial on the fitness issue" and in the same way it might have the effect of making the jury reluctant to find him unfit under this bill that is introduced. That has been the case for some time. In other words, it could arise later in the trial and the jury has seen the consultation.

Mr. SCOTT (*Danforth*): What is the argument against having it tried as soon as the charge is read?

Mr. SWADRON: Well, under our present system it automatically means that the person is detained under the warrant of the Lieutenant Governor without having tested the prosecution's case nor allowing the defence to submit any evidence, and they can maintain that they are innocent and they have not had a chance to prove it. Under all of the proposed amendments it would be possible at least to test the prosecution's case or, in the wider scope, to allow the defence

to submit its case, and there would be room for an acquittal; whereas often in cases under the present system there is no chance for the case to even get off the ground.

Mr. SCOTT (*Danforth*): A two-fold dilemma, I can see.

Mr. SWADRON: Yes, and granted, it might be unfair to the accused that he has been communicating with his counsel and the jury might be loath to find unfitness to stand trial, but in the over-all picture we are placing some accused in a better position than they were before, and I do not think any disadvantages outweigh the extreme advantages that we stand to get.

Mr. LAFLAMME: I would like to ask a question related to the one asked by Mr. Scott. As a counsel would it be fair to hide the fact the client is not fit for trial until the verdict comes.

Mr. SWADRON: Well, I do not think he is hiding it. He is certainly not hiding it from the judge, because any postponement is at the discretion of the judge and he will allow a postponement according to the very terms of the section only where it is in the interest of the accused. So all these factors may be weighed; we might have requests to postpone the issue but the judge in his discretion may say that it is unfair, in that particular case that you mentioned, and would not allow a postponement of the issue. I think the safety catch is built into the various terms of the section.

Mr. LAFLAMME: I read in paragraph 2(a) points of view following a fitness finding: "no appeal available against a finding of unfitness." Why should there be no appeal on that? It is a matter of public interest. It is quite easy for the accused to try to demonstrate that he is unfit to stand trial. Why could there be no appeal in that case?

Mr. SWADRON: Oh, I am sorry; I meant in that sense that there is no appeal currently against a finding of unfitness. I recommend that there should be. I was just outlining the current procedure and what happened after a finding of unfitness. I am sorry; that has to be considered in context and I am just stating the current position.

Mr. AIKEN: I just have one question, Mr. Chairman. Under the bill would there be anything to prevent counsel from permitting the trial to proceed right to the point of conclusion, where he has put his defence in and then believing he was not doing too well raised the question of fitness to stand trial.

Mr. SWADRON: Yes, he could raise it. He has already raised it, mind you, because this trial is proceeding on the assumption that it is in the interest of the accused, but he might argue that it is no longer in the interest of the accused, and he might think, "I am not doing too well, I think perhaps things are going sour for me. It is true that my man is unfit to stand trial. Under the general law he should not have been tried in any event. It is only where I can get him some justice that we have been going this far and I think that the judge should accede to that request".

Mr. AIKEN: Well assuming the question has not been raised at all in the normal course of the trial; will he right at the conclusion be permitted to raise the issue?

Mr. SWADRON: Oh, yes, I think it is very important that a person not be in jeopardy of being convicted if he has been or is unfit to stand trial. Indeed the question of fitness could arise under our current system more than once during the same trial—and there have been cases where a man has been tried; the counsel doubts his fitness and he has been found fit, and then a couple of days later during the course of the same trial the defence counsel says, “I think he is unfit now, let us try it”, and I think in a proper case the judge must try it all the way along. He must be fit to stand trial during the complete course of the trial.

Mr. AIKEN: In that case then, Mr. Baldwin’s concern about communication between counsel and client may have a reverse effect on the jury too; they might assume that the counsel was not able to communicate.

Mr. SWADRON: Exactly. And under all these considerations the jury is going to consider back to see whether the person was unfit at any time during the trial. Under the current system you can have a successful appeal against a conviction if you can show that at any time during the trial the accused was unfit to stand trial.

Mr. BALDWIN: It might be true that counsel is unfit to conduct the defence.

Mr. CHOQUETTE: I have just one question. A statute was passed in 1964. Have you in mind any case that would show the efficiency of those amendments, or is it too early?

Mr. SWADRON: I believe it is too early. I must admit that I know of no case decided under the system in the United Kingdom, but I know of several cases in Canada which could benefit from the postponement of the issue.

The CHAIRMAN: Are there any other questions? Mr. Honey, you have not asked any questions yet; do you have anything?

Mr. HONEY: There is one thing that comes to my mind and I will have to admit that I am not an authority on criminal law. Mr. Swadron, you mentioned that under our present procedure the issue of fitness could be tried even after all the evidence was in?

Mr. SWADRON: Yes, any time before a verdict.

Mr. HONEY: Then this would normally, I would think, be done on the volition of the defence counsel; the motion would come from defence counsel?

Mr. SWADRON: I would not say that, sir; I would say that the defence is in a better position to assess the possibility of unfitness to stand trial than is anyone else because of the close contact by defence counsel, but it is federal law that the issue may be raised by the court or by the prosecution as well as by defence.

Mr. HONEY: But normally it would be raised by the defence. Could you tell me briefly then how will this amendment enhance the position of the accused with respect to having a conviction registered against him because, as I understand it, on this amendment the issue of fitness may be tried, as set out here, at various stages, and part of the defence may be adduced, as you mention in subsection (3) and then the issue tried. How does this protect or give the accused a better status than under the present law?

Mr. SWADRON: Because his status under the present law might well be that no evidence is called.

Mr. HONEY: I appreciate that, but this would have to come by the volition or the initiative of the judge, would it not?

Mr. SWADRON: That the issue will be postponed?

Mr. HONEY: No. Under the present law it is not necessary to try the issue of fitness at the outset of the trial, is it?

Mr. SWADRON: If it arises and the argument in favour of it is sound. For instance, if it arises and the judge is of the opinion that it has arisen, then the practice is that it must be tried.

Mr. HONEY: Well the point that bothers me is that it would seem to me the judge would have discretion now, and this may not be the case as you indicated; but the judge certainly would be aware of the risks or the unfairness to the accused of trying the issue of fitness before the other issue of guilt or innocence is tried.

Mr. SWADRON: You mean under the current law?

Mr. HONEY: Yes, I am talking about the current law. Now if the judge says that before we hear evidence on the guilt or innocence of this accused we are going to try the issue of fitness. But why, under our present practice, would the judge not have the discretion to postpone the trial of that issue?

Mr. SWADRON: Well I could put it this strongly, that there is no clear authority which would allow him to do that. There is no mandate that he cannot but I think our position is similar to the position as it was in the United Kingdom a few years ago, where they thought that anything short of statutory amendment would not make it clear that the judges have that power, and from my experience in the past I would say that most judges, if not all, would say that there is no power to postpone the issue once it is introduced and they feel that it is an issue.

Mr. HONEY: So it is not a provision of the Code as it stands now but it is a practice that has grown up?

Mr. SWADRON: Exactly.

Mr. HONEY: Thank you.

Mr. AIKEN: Furthermore, Mr. Chairman, without the express provision of this section the judge might feel himself without jurisdiction if he permitted counsel to cross-examine Crown witnesses without being properly instructed.

Mr. SWADRON: Exactly.

Mr. MUNRO: On that point, if I could just refer to these summaries of two cases that led up to the enactment in England, on page 2 the classic statement of the English common law position is summarized in the case of *Rex v. Beynon* (1957) 2 Q.B. 328. In this case the Crown submitted that there was a question as to the accused's fitness to plead. Counsel for the defence requested that the general issue be tried first "so that the accused is not deprived of the possibility of being acquitted". The trial judge rejected this contention on the basis of authorities that a man cannot be tried for a crime unless he is in a mental

condition to defend himself. *Devlin*, J. in *R. Roberts*, (1954) 2 Q.B. 329, came to the opposite conclusion. I do not believe that case was upheld. Is that correct?

Mr. SWADRON: Well, it was not followed. That was the concept of the authorities which I mentioned which invoked the British bill.

Mr. SCOTT (*Danforth*): You read us a letter from Attorney General Wishart of Ontario. Has the bill been shown to any of the other similar officials in the province and are there any letters of comment from them?

Mr. MUNRO: No. I submitted the bill to the Attorney General because he was involved in the Farewell case and asked for his opinion so that it could come before the Committee, and then I wrote to the Minister of Health, and the Chairman did also, for permission for Mr. Swadron to come and Mr. Swadron's views were known to the Minister of Health of the province.

Mr. SCOTT (*Danforth*): The reason I asked, at one of our early hearings we had a bill dealing with an amendment and we decided to send it, together with a copy of the minutes, to all the attorneys general.

The CHAIRMAN: That was Mr. Forest's bill, the one about the run away driver, the hit and run, and we thought it might be appropriate to get the views of the attorneys general.

Mr. MUNRO: I could have done that. The only reason I singled out Ontario was because several of these cases, really two or three in the last two of three years, brought this question to a head. It has occurred in Ontario principally.

Mr. SCOTT (*Danforth*): I think it may be worth doing after the witnesses have given their testimony.

Mr. BALDWIN: Mr. Chairman, I have one more brief question to ask. The point that I raised I suppose might be met if we adopted the procedure which is in the Criminal Procedure Amendment Act of the United Kingdom in 1964 where if the question of fitness is to be determined on arraignment by a jury other than that which determines the issue if it is to be determined at a later date it should be determined by a separate jury or by the jury by whom the accused is being tried as the court may direct. In other words, if we took your suggestion and widened subsection (3) to include the calling of witnesses as to any aspect of the defence and left it free to the judge on application to either try with the same jury, if it were the kind of defence which could be well tried in that way, or to impanel a separate jury to try the issue of fitness and another jury, of course, would try the question of whether guilty or not guilty.

Mr. SWADRON: I think that is a very good point, sir, and it could not be argued against that that this new fresh jury which has been just impanelled was seeing this man for the first time because under our present system that is what often happens. The accused is brought into court and the issue of fitness is passed on. There is a charge of guilt and, of course, there is evidence brought on that point.

Mr. MATHER: Mr. Chairman, I have just one question. Is there any data in relation to the procedure in the American courts?

Mr. SWADRON: I have an article which I wrote and published in Philadelphia which outlines the federal system of fitness to stand trial. Of course it does not deal with all 51 jurisdictions in the United States, just the federal system. I have a fair knowledge of what is going on there. I would say that there is, as far as I know, nothing as good as has been enacted in the United Kingdom or as has been introduced here. I have these articles if you wish copies of them.

Mr. MATHER: Could you indicate what is the extent of this issue in Canada; that is, how significant is it? Are there many cases involved?

Mr. SWADRON: I think this is a good opportunity to ask Dr. Boyd, if it is permissible, because he has a concentration of so-called criminally insane in his hospital in Penetanguishene.

Mr. MUNRO: No, I would like to have Dr. Boyd but, in answer to that, I think that there will be future witnesses, Mr. Chairman, if the Committee desires to hear them, from the Canadian Association for the Mentally Retarded also.

The CHAIRMAN: Dr. Boyd, may we call upon you?

Dr. B. BOYD (*Superintendent, Ontario Mental Hospital, Penetanguishene*): Thank you, sir. I appreciate the opportunity to come down and meet with you gentlemen.

As background I might mention that the maximum security or Oakridge division of our Ontario Hospital at Penetanguishene has beds for 304 men. About half of these have come to us from courts, reformatories of penitentiaries and about half have come to us from other Ontario hospitals because they are difficult to manage. We are the only maximum security facility in the province and therefore we do get a concentration of offenders who are considered potentially dangerous and who require mental hospital care.

Yesterday I asked the staff to dig out the files of those patients whom we are holding where there still is a charge outstanding against them, and they got me out 68 files which I went through yesterday morning just to get a kind of a cross-section of the type of person that we are holding with a charge who has not had a fair hearing.

Now looking through the 68 files I would think that all but about 20 are clearly so mentally ill still, at the present time, that they obviously require to be in a mental hospital so that perhaps no injustice is being done to them in depriving them of their liberty. However, the longer they run without trial the more difficult it is going to be for them to have a fair trial. One or two examples might illustrate that. I had a boy who was admitted, charged with murder, and considered unfit to stand trial as, indeed, he was. He was a culturally deprived mentally defective. Twelve years later, in the cultured environment of our hospital, he had matured and his I.Q. had risen to the point where we felt he was fit to stand trial. We recommended that he go back to stand trial and the Crown Attorney managed to rally a few witnesses that were still alive and there was a trial. He was acquitted. Now if the jury was right, that he was not guilty, there may have been some sort of an injustice done in holding this boy in hospital for twelve years. Incidentally, he is now out in the community and he is doing reasonably well.

Another boy, a mental defective, was sent to us on a mentally ill certificate and the police dropped in to indicate that he was their chief suspect in a murder and please do not let him go. That put us in rather an awkward position because he was not sufficiently defective to keep in hospital and if, indeed, he had not committed this offence it would be only proper to release him whereas, if he had committed the offence, he should be kept in hospital for quite some time, and we did not know what to do with him. In this case we managed to get the Crown Attorney to prepare the case, get his evidence collected, until he convinced us that the fellow was indeed probably the offender, and we actually sent him back to court where he was found unfit. By this time we were satisfied that he probably committed the offence.

But this whole system thrusts upon the hospital superintendent and his staff the decision as to whether the offence was committed by the patient or not, and very frequently that is a most important factor in our disposal of the case. The present system labels these people guilty until proven innocent and that is about what it is, because when they come to us with a serious charge we have to assume that they did it. We cannot let them go free where otherwise they would be fit to release in many cases.

I could illustrate another case where we had two patients sent to us charged with murder and unfit to stand trial. They had each confessed to the murder; the interesting thing is that it was the same murder and they each claimed they did it alone, so I presume in this case that the first to recover goes back and takes the rap.

From our point of view, in the hospitals, it is clearly very desirable to get this decision put back in the hands of the court and to get as much of the evidence heard that is possible and to have the trial occur as near to the time of the offence as possible.

Those are some of the highlights of what I wanted to say. In regard to this word "insanity", of course, it bothers us psychiatrists; we dropped it thirty years or so ago. The only time we run into it is when we are talking to lawyers. It is in the class with "lunatic". Historically, it is a very interesting word; it has to do with uncleanness—unclean spirit, I presume—and personally I would like to see the word "disability" rather than "insanity". So many people assume that mental illness is a matter of black or white and it is embarrassing to us in court to have to say whether a person is or is not mentally ill because, in a way, we are all mentally ill to some extent.

I would like to compare it to physical illness. You very seldom ask is this man physically ill or is he physically healthy, and if he is physically ill you take away all his rights. A man may be physically ill and be quite capable of driving a car but not capable of climbing, say, a ladder. We have to put the particular skills required against the disability caused by the illness and, of course, it is the same way with mental illnesses. A person may be certifiably mentally ill and yet still fit to stand trial, and yet so often the courts will refuse to have the trial unless we will say he is not certifiably mentally ill. I do not think that is the issue because he may be fit to stand trial. Then, of course, the question of insanity under Section 16 is another separate issue both in time and in skills required. I would just like to make that point.

Mr. BOYD: Once they have come to us they need to have a greater degree of mental health to get out. That is, the criteria, or level of mental health required for release are somewhat higher than the criteria responsible for coming in. When we recommend that a man go back to court not only must he be fit to stand trial but he needs to be likely to remain fit to stand trial until the trial is over. I am afraid in many ways he needs to be a fit and proper person to release to the community. That comes into it and I do not think it should.

Mr. RYAN: Is the effect of that that a man must be unlikely to be dangerous to himself or to others if released. Is that the test?

Mr. BOYD: It tends to be but I do not think it should. It should be fitness to stand trial, period.

Mr. SCOTT (*Danforth*): Then why does your consideration of his committing of the offence enter into it? I am sorry to press it but I am not clear as to the connection.

Mr. SWADRON: Might I offer something in that respect. After a man has been confined for several years it has been the practice, when considering the disposition, to point out the possibility of discharging him directly into the community. There have been cases of persons having been found unfit to stand trial spending several years in the mental hospital and then the question is can we get him out of the hospital. There is a practical alternative of sending him to the community; the attorney general or the crown attorney involved might take the position that we could never get a conviction now and there is no sense in prosecuting further. So there is the alternative of discharging him directly into the community, which arises sometimes, in which case the test, of course, would be is he likely to be the type of person to commit the offence with which he was charged, because it seems to me you would have to take into account that he was charged with a very serious offence. I believe Dr. Boyd is alluding to the question of fitness to stand trial where the crown attorney has stated that his intention is to try the person, and in such cases I believe Dr. Boyd feels the question of danger or likeliness to commit some dangerous act should not come into the question, that he is entitled to his trial if he is fit to stand trial even though he might be acquitted and even though he might be very dangerous.

Mr. BALDWIN: On this question of the use of the word "insanity", we have raised one possibility of using the word "disability". Assuming that that is not acceptable what about something like the type of wording which was used in the Durham case, something to the effect that the accused, by reason of mental disease or defect lacks substantial capacity to conduct his defence; in other words from a psychiatric point of view or a professional point of view. I am not urging this; I am just asking for information whether that is precise enough to be acceptable.

Mr. SWADRON: That is a possibility. Mind you, having considered the question earlier at this hearing I feel that the British terminology is much to be desired because while it does not define it in the British act—it says whatever would have been a bar to trial—and, as I said before, I believe that the common law criteria are very clear.

Mr. BALDWIN: I agree with you. This is my own view. I am just thinking as to a possible alternative; if this is something which cannot be sold, would this

other wording be the type of wording which might from a medical viewpoint be one which might be clear enough and precise enough to be the subject of an issue.

Mr. SWADRON: I think it is fine. Perhaps the medical men would have something to say on that.

Mr. BALDWIN: That is the reason I was asking Dr. Boyd.

Mr. BOYD: I do not believe it would help particularly; I do not think it would make it any easier than it is now.

Mr. BALDWIN: I have one other question on the matter of the incidence of the number of people who might be detained as being unfit to be tried. Some time ago I read a statement on this and then I had a book which I showed to you this morning. We possibly both agreed that some of the relevancy of some of the statements are not altogether to be approved. This is by Dr. Scasz on psychiatric justice; on page 50 he refers to statistics covering a hospital known as the Matawan State Hospital with approximately 2,000 patients, and the statistics he gives are that of something over 2,000 patients 1,167, or 54.5 per cent had been admitted on the ground that they had descended to such a state of idiocy, imbecility or insanity as to be incapable of understanding the charges against them or of the proceedings or of making his defence. This is an astoundingly large figure; would you think that in one institution in the state of New York that the figure of 1,000 would be a fair appraisal? Of course I suppose you have to take into account what other institutions there may be. I am surprised that more than half the number of people in one institution are confined because they are being declared unfit to stand trial. I am interested to know the nature of the charge. Do you think there are a particularly large number in the United States confined to institutions on that basis?

Mr. SWADRON: That are unfit to stand trial?

Mr. BALDWIN: Yes.

Mr. SWADRON: I would say that there are probably, according to expert authors, far more than there should be. There is a great movement to have more people tried than are now being tried. On the other hand, there is a movement which says that the issue does not arise often enough. A lot of people who are unfit to stand trial are being convicted. It is my personal opinion that as many trials as possible should be carried out as long as it is fair and if the person is unfit to stand trial he is not put in jeopardy of conviction. As many trials as possible should be conducted as soon as possible because it is a fundamental right of an accused person to a speedy trial; I think that that point should be sustained because the longer it is after the occurrence the more difficult it is to conduct a trial.

Mr. BALDWIN: Also to obtain a conviction.

Mr. SWADRON: Yes, it does place the prosecution at a disadvantage.

Mr. AIKEN: Mr. Chairman, I would like to go back to a statement that Dr. Boyd made in connection with some patients who have been in the Ontario hospitals for 30 years who may have been innocent. I would like to rather qualify this to make sure that we do not get the wrong impression. Is it correct

that these people are undoubtedly still under some sort of mental disability, or could they be released if you believed that they had recovered their sanity, if that is the proper word to use?

Mr. BOYD: I am glad you made that point. Yes, we do not have to hold them for years and years after they have recovered. We can recommend that they be returned to court to stand trial at that stage and usually that is fairly prompt procedure. There is also the possibility that the charge may be dropped at that stage. We have had, I think, five on capital charges in the last six years who had recovered sufficiently that we sent back and they were duly found not guilty by reason of insanity. Then, of course, they were sent back to us, although recovered, and then we are able to start the machinery to have a recommendation that the Lieutenant Governor's warrant be lifted. We have five of these now back out in the community who have made a good recovery and are doing well, who had been found not guilty by reason of insanity and who were formerly in our place, most of them as unfit to stand trial.

Mr. AIKEN: But would these people have been detained in any case perhaps in another Ontario hospital even if they had not been suspected or charged with a criminal offense?

Mr. BOYD: I had one man who spent nearly 40 years after recovery and another one who spent approximately 30 years before release. That might have happened anyway, because if they had had their trial initially they might well have been found not guilty by reason of insanity, although I do not think it is actually relevant to this bill. I think it is a problem that is resolving itself. I do not believe I have anybody there now that we think should be either out or back to court.

Mr. AIKEN: Well I wanted to clear this up because of the statement you had people there for 30 years that might have been innocent; the fact is they still have a mental disability which would have retained them in custody in some place.

Mr. BOYD: That is right.

Mr. AIKEN: The question I have is a general one relating to this amendment. You are acquainted with the general amendment being considered, Dr. Boyd; do I take it that you feel this will be of some definite assistance in disposing of cases in a more proper way than they are now handled?

Mr. BOYD: Yes, I do. I am in favour of it in principle. I am not legally trained so I do not know enough about the fine points that you gentlemen will have to argue about to know just which form it ought to take, but I am certainly in favour of it in principle from the point of view for justice for our patients.

Mr. AIKEN: The other question I was going to ask is whether, without restricting yourself to this particular bill, because we in the Committee are certainly not restricted to this bill, is there any other amendment along this line that you can suggest that might be of assistance? This may be a tough question but nevertheless we are considering this and perhaps there is something that has not been covered here that the Committee might recommend to the House for amendment.

Mr. BOYD: I am really afraid to get started on this because it is throwing the door wide open here. I do not know how strictly you want to keep to the terms of reference of this particular bill or whether you want to get involved in the whole subject of mental patients and the law.

Mr. SWADRON: I think that there is one very much related question that I would raise. I mentioned in this outline that there is no provision for a person who has been found unfit to stand trial to get back to court as of right. In other words, the person might be in the mental hospital for many many years and try diligently through counsel or through his family to get back to court to be tried, and there is no procedure for it.

Mr. AIKEN: This does not help it either.

Mr. SWADRON: This bill does not encompass that section or that possibility.

Mr. AIKEN: This is subject to correction by the Chairman of the Committee, but I certainly think that having started on this general subject of the detention or the proper trial of mental persons that we might consider other matters without going too far afield.

Mr. SCOTT (*Danforth*): Mr. Chairman I think we have another bill coming up by Mr. Brewin which opens up the whole field of definitions of insanity and so on and perhaps when that is up Dr. Boyd could come back, and be with us again. He has been a most enjoyable witness.

The CHAIRMAN: That is what has been going through my mind. That the subject matter would be the M'Naghten rules and that Mr. Brewin feels now, if they were out of the bill, it would do away with the rests under The M'Naghten rules, and then substitute another test.

Mr. AIKEN: Well then, Mr. Chairman, perhaps the one point that Mr. Swadron has mentioned is not irrelevant to this bill. I suggest we consider that and perhaps Dr. Boyd and Mr. Swadron might give an opinion on it.

Mr. SWADRON: It is difficult to set forth recommendations as to what the proper course would be. It might be arbitrary to state time limits and intervals during which a person found unfit to stand trial would automatically be brought back to court to re-try the issue, whether or not he is still fit to stand trial.

Mr. AIKEN: Pardon me for interrupting. Are you referring only to the issue of whether or not the person is fit to stand trial?

Mr. SWADRON: Yes.

Mr. AIKEN: So, if we accepted the suggestion you would recommend that there be a provision that a person who is detained because he was found not fit to stand trial should ask to have the issue re-tried.

Mr. SWADRON: Exactly, and as it stands now there is no procedure for it. It is in large part, I believe, up to the hospital superintendent to keep an eye on such a person and recommend, when he feels he is fit to stand trial, that he be returned to court for this purpose.

Mr. MUNRO: Just on that point, is there not a possibility, if this amendment were enacted or an amendment of similar principle were enacted; with regard

to a good many of the men in hospital now that have been found unfit to stand trial a relatively easy administrative procedure could be adopted to have these people brought back to court.

Mr. SWADRON: Well I would certainly say that there would be fewer people sent to hospital who have been unfit to stand trial if this bill would be enacted, because many now sent to hospital might be acquitted during the course of the trial. Certainly the incidence of the problem would decrease.

The CHAIRMAN: Is it not true. Dr. Boyd, that a good many people in your custody think they are much more sane than the people who are not in your custody.

Mr. BOYD: That is right. I think the courts would be pretty busy, or an outside board of committee would be pretty busy. But the present system virtually leaves it up to the superintendent unless some enterprising family issues a writ of habeas corpus and I do not think that with the Lieutenant Governor's warrant they can even do that. There is nothing but the opinion of the superintendent that will get the man back to court and the superintendent may not want to stick his neck out too far.

Mr. RYAN: What you are saying, Dr. Boyd, in effect is that the man in your opinion is no longer certifiably mental. Is that the test?

Mr. BOYD: No, sir. The core of the test is that he is recovered enough mentally that he is now fit to stand trial.

Mr. RYAN: But he would still be certifiable you said, in some areas.

Mr. BOYD: Oh, yes.

The CHAIRMAN: Well gentlemen, I have just got a message that Mr. Gray is waiting for me to present a bill before his committee. I know you would like to carry on. Would either Mr. Aiken, Mr. Scott, Mr. Choquette or Mr. Ryan act as chairman when I leave.

Mr. RYAN: Dr. Boyd, I am trying to get at what your mental processes are in your own case—I am not trying to be too personal in this matter—when it comes to making a recommendation to court; I would also like to know, in the same connection, whether another psychiatrist from the outside can get in to interview a patient to come to his own conclusion or his own opinion about the patient, and can such a psychiatrist consult with you and assist you in coming to a conclusion?

Mr. BOYD: Well, those are good questions. We always allow, and indeed welcome, any outside psychiatrist who would like to come and see any of our patients.

Mr. RYAN: At the instance of a relative?

Mr. BOYD: Yes.

Mr. RYAN: A lawyer?

Mr. BOYD: Yes, a lawyer; there is no problem there. We like to discuss the case with them and in most cases there is no problem. If the man has been certified as mentally ill there is certainly no problem because we are acting on the patient's behalf and if it is in his interest for us to discuss his case with his

lawyer we can certainly do so. There sometimes arises a difficulty when a patient is sent on warrant of remand from a court; we are conducting an investigation for the court and we are going to report back to the court. A defence psychiatrist may turn up at that point and there is some question as to how much communication there can properly be between the psychiatrists that are probably going to end up by being subpoenaed by the Crown and the defence psychiatrist. On my staff at present I have I think five doctors trained in psychiatry and there is usually three or four of these involved in the review of serious cases. It is a joint opinion; we hammer out differences and the opinion that is given to the court is, legally, from the superintendent but it is actually from this conference of psychiatric staff. As far as going to court, I think I myself have been subpoenaed by the defence side more often than I have been subpoenaed by the Crown. We do not mind which side we go on; we do not feel we are taking sides there. But there is that point, that since our report on the warrant of remand is for the court the Crown may not wish to disclose this report to the defence and quite likely the defence will not allow his defence psychiatrists to talk to us. As psychiatrists we would much prefer to get together and work out our differences before we do it up on the witness stand.

Mr. RYAN: You might at one point feel that the patient is no longer certifiable, is quite fit to stand trial, and then the next week have a different opinion. What would you do about a situation of this kind?

Mr. BOYD: Sometimes we estimate how long the trial is likely to last or how long he is going to sit in jail before he gets his trial. He may have to sit for five months in the county jail before he gets his trial and he may be well now, but if we think he cannot stand that there is no sense sending him back for trial. He has to be likely to remain well until the trial is finished. It is rather embarrassing to send a man back for trial, have them start all this machinery in motion and have him break the first day or so and have to come back to us the second time.

Mr. RYAN: What would the average period of clarity be that you would look to in a patient in this condition?

Mr. BOYD: Usually at least three to six months, and sometimes several years, depending upon the history and how much tendency there has been already for the illness to recur. I sent one man back this last year who had eight admissions at least to mental hospital. We thought he would have another attack, but we thought he would stay well until the trial was over, and in those cases we sometimes will arrange to leave the man in hospital until the actual trial arrives and then move him, rather than have him spend two to five months in the county jail.

Mr. MUNRO: Could I just mention, to follow up a matter Mr. Aiken asked about. Dr. Boyd, if these amendments were carried, it is my understanding—I may be incorrect—that many of the people that you presently have at your hospital, many of whom, let us say, have been charged; the issue as to their fitness to stand trial was determined at the commencement of the proceedings, and they were found unfit and referred to your hospital. If the principle embodied here were placed in the amendments and carried into the Criminal Code, then it would be quite possible, would it not, for many of the people you have at your hospital, upon the recommendation of the Attorney General and

the Crown, to be brought back to trial in order that they could obtain the benefit of these amendments. They may have defence counsel now that would wish to make submissions that the issue may be delayed, the determination, in order that evidence could be adduced. With many of the men that you now have in the hospital, who have been incarcerated there, there has been no evidence adduced to substantiate the charge, and they would now have that privilege if these amendments went through, more or less upon an administrative act on the part of the Crown or the Attorney General for Ontario. Am I correct in that understanding?

Mr. BOYD: Well it is a legal question that you have asked me rather than a medical one and I think you people could answer it better than I. I would expect that we would have a lot that could go back. Mind you, there are some people who are so urgently in need of mental hospital treatment that to put them through the trial would not be wise for them; there still needs to be provision to take out of the stream the acutely ill person and get him urgently needed treatment in the mental hospital just as fast as possible.

Now even some of our patients who have been ill 25 or 30 years, while they have never been found guilty or not guilty because of insanity, it has never been proven that they committed the offence; they are still so sick that they obviously need mental hospital care and I do not know that there is any real advantage to trying to get them back to go through this.

Mr. MUNRO: But say for those who would not fall within that category, they would now receive a tangible benefit from the implementation of these principles.

Mr. BOYD: Yes, I think we have a minority of patients who would derive a real benefit from this type of thing.

Mr. AIKEN: Provided, of course, there was a provision—

Mr. MUNRO: No, I am saying without a provision.

Mr. BOYD: That is the legal aspect of it and I really cannot answer the question. Mr. Swadron here could do better.

Mr. SWADRON: Well, notwithstanding that there is no provision for getting back to trial as of right on the part of the accused, certain persons who are held as unfit to stand trial are from time to time sent back to trial, and there is no reason why they could not reap the benefits of these provisions even failing the procedure to send them back as of right on their own application.

Mr. MUNRO: I was rather interested and the only reason I brought this out was there are several cases, one of two of which I have knowledge, that should this amendment go through then it would be anticipated that certain defence counsel and others interested would then make submissions for these people to be brought back. I am thinking particularly in the area of the mentally retarded. As I understand it, Dr. Boyd, and I would like a little emphasis placed on the position of the mentally retarded under the present legislation, it seems to me that the injustice created by the present legislation is most vivid with respect to the mentally retarded who come within the ambit of the present legislation and who, I would think, would receive the most benefit from any type of amendment.

Mr. BOYD: Yes, I think you are right for several reasons. The mentally ill person has a very good chance of recovering in a short time, in which case he can have his trial; or if he does not recover there is a very good chance that he probably should be in the hospital anyway and therefore he is not having any great injustice done. The higher grade of mentally defective is usually capable of living in the community a somewhat sheltered life. Now if he is prone to commit offences resulting from his mental deficiency that will make him certifiable as mentally defective and a proper person to keep in a mental hospital, to prevent him committing offences. On the other hand, the same mental defective or the same level of subnormal intelligence, who has not committed such offences is not certifiable. So they come into the hospital with a charge against them and we are left with the problem that if he did this he should be certified and kept in a mental hospital; if he did not do it he should be returned to the community, and we have to be judge and jury with no evidence. I think that this type of bill would be of greatest protection to that type of person, where they could go on and find out if in fact it is likely that he did commit the offence.

Mr. RYAN: Must a man necessarily have malignant delusions then to be kept in, or is there some other area as well that can render him certifiable?

Mr. BOYD: There are many different areas that can render a man certifiable. He does not need to have delusions at all. He may be depressed to the point of being suicidal; he may be apathetic to the point where he cannot maintain himself in the community; he may be impulsive and dangerous to others without having any delusions whatsoever.

Mr. RYAN: And the man who has benign delusions, who thinks he is Santa Claus or something of that order, I suppose you would not keep him in at all.

Mr. BOYD: There are lots of people who are mentally ill who should not be certified to the mental hospital. As you say, the man with benign delusions, he may be a pleasant asset in the community and no harm to anyone, and if he is suffering from the kind of illness that is not likely to be helped by treatment there would be no reason to put him in a mental hospital; but he is very mentally ill.

Mr. RYAN: While I have the floor, may I go to another subject, doctor. What are the visiting privileges for relatives at Penetanguishene?

Mr. BOYD: They can come any day of the year. We prefer local visitors to come in the afternoon but because of the distances involved and the inconvenience we allow visiting in the evening, week ends, and holidays.

Mr. RYAN: Is there any limitation per week or per month on the number of visits?

Mr. BOYD: No. We might, in a particular case, because it is best for the patient, restrict certain visitors. As I read in the morning report a couple of days ago one of my Italian patients had, I think, 18 visitors that afternoon.

Mr. RYAN: And how long would the average visits be?

Mr. BOYD: Usually several hours. Very often the family will bring a meal and sit down and eat with the patient.

Mr. RYAN: Thank you.

The ACTING CHAIRMAN: Mr. Munro, did you want to ask another question?

Mr. MUNRO: Mr. Chairman, if I may ask a question on mental retardation, doctor. The reason I think there should be something in the evidence concerning this is that there is a fairly high incidence of mentally retarded people in our community and that is one element not exclusively of course that this amendment is designed to assist; I was wondering if you could just give the Committee the benefit of some of the common characteristics that are shared by mentally retarded people. I am thinking in terms of the common characteristics and how suggestive they are; in other words, if somebody should suggest to them concerning the particulars of a certain offence, whether they did it or not and be suggestive in the slightest way that they may have, a confession is easily forthcoming. I would be interested in hearing about characteristics of that kind related to mental retardation.

Mr. BOYD: Yes, that is a very real problem. Many retarded patients are very suggestible and in the police station setting it is not at all difficult to get them to give a confession to an offence that they had nothing to do with at all. I have seen that quite frequently. We had a boy just within the last six weeks who obligingly confessed to a murder and the police did not know where to go from there because they did not think he did it, but he seemed so eager to tell them about it. They did not charge him with it but we do not think he had anything to do with it, but he readily confessed. That type of thing is quite common and, of course, if the police are faced with solving an apathy crime in a community there are probably several defective young men around whom the neighbours are afraid of anyway and who are suspected whenever a crime occurs, so immediately of course the police are going to pick them up for questioning and if they get a confession from them and a charge is laid then at the present time off they go to the mental hospital and that is it. So this bill would be a real protection against that type of thing happening.

Mr. MUNRO: Just one other question, if I may. What is the potentiality of a mentally retarded person along these lines—and by placing this question I in no way want to suggest that they are not capable of an offence involving a sexual act.

Mr. BOYD: I think sexual assaults of violence, it is probably a little bit less than the normal intelligent population; they get led into trouble but by and large defectives do not commit crimes involving much initiative.

Mr. MUNRO: In terms of violence?

Mr. BOYD: Yes. When you think of the number of retarded people that we have living out in the community most of them go through life and never hurt anybody.

The ACTING CHAIRMAN: Are there any other questions? If not, before we recess there are two other items. First, on behalf of the Committee the Chair would like to put on record our appreciation to our colleague from the House for bringing this bill and to the two witnesses who have appeared. I think what you have done is start us off in an area of great concern and complexity regarding the rights of the accused and the administration of justice in that

area. But it has been a most useful session and I hope that as we get further into the subject you might be available on invitation to come back and discuss these matters further with us when we get into the more complex aspects.

There is just one other thing, I have been told we need a motion that reasonable living and travelling expenses be paid to Mr. W. F. Bowker, who appeared before the Committee June 7, 1966, in accordance with the scale of expenses provided by Mr. Speaker.

Mr. RYAN: I will so move.

Mr. BALDWIN: I second the motion.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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LÉON-J. RAYMOND,
The Clerk of the House.

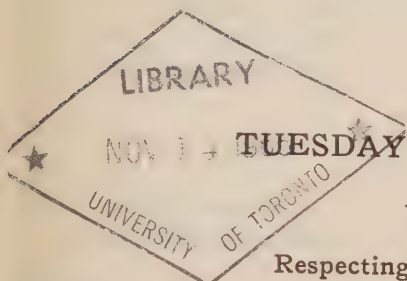
HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10



TUESDAY, OCTOBER 18, 1966

Respecting the subject-matter of
Bill C-26, An Act to amend the Criminal Code (Safety Devices for
Automotive Vehicles)
Bill C-49, An Act to amend the Criminal Code (Dangerous Motor
Vehicles) and

Private Members' Notices of Motions Numbers 26, 31 and 38

WITNESSES:

From the Canadian Automobile Association: Mr. Guy Renaud, First Vice-President; Mr. J. G. McQueen, Secretary-General; Mr. E. G. Paul, Director of Traffic and Safety.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (High Park)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken	Mr. Honey	Mr. Ryan
Mr. Bell (<i>Carleton</i>)	Mr. Laflamme	Mr. Scott (<i>Danforth</i>)
Mr. Choquette	Mr. Latulippe	Mr. Tolmie
Mr. Chrétien	Mr. MacEwan	Mr. Trudeau
Mr. Fulton	Mr. Mather	Mr. Wahn
Mr. Goyer	Mr. McQuaid	Mr. Woolliams—24.
Mr. Grafftey	Mr. Nielsen	
Mr. Guay	Mr. Otto	

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, October 5, 1966.

Ordered,—That the subject-matter of Private Members' Notice of Motion No. 32, be referred to the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

REPORT TO THE HOUSE

TUESDAY, October 18, 1966.

The Standing Committee on Justice and Legal Affairs has the honour to present its

THIRD REPORT

Your Committee recommends:

- (1) That it be granted permission to adjourn from place to place.
- (2) That it be authorized to sit while the House is sitting when meeting beyond the precincts of Parliament.
- (3) That the Clerk of the Committee and the necessary supporting staff accompany the said Committee.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, October 18, 1966.

(12)

The Standing Committee on Justice and Legal Affairs met this day at 11:15 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (High Park), Chrétien, Forest, Guay, MacEwan, Mather, McQuaid, Ryan, Tolmie, Woolliams (11).

In attendance: From the Canadian Automobile Association: Mr. Guy Renaud, First Vice-President; Mr. J. G. McQueen, Secretary-General; Mr. E. G. Paul, Director of Traffic and Safety.

The Chairman presented the Third Report of the Subcommittee on Agenda and Procedure which is as follows:

"Your Subcommittee recommends:

1. That Mr. Eugene M. Henry of Warnock-Hersey Ltd., Highway Consultants, be invited to submit a brief re Bill C-26, Bill C-49, Notices of Motion 26 and 31.
2. That a letter from the Motor Vehicle Manufacturers and an attached program of a proposed trip to Detroit at the invitation of the automobile manufacturers be laid before the Committee for discussion and consideration.
3. That Mr. Gordon Taylor, Minister of Highways of Alberta, who acknowledged an invitation to appear before the Committee re Bills C-26 and C-49, be invited to appear at his convenience, early in November.
4. That Mr. Robert E. Malkin be invited to appear before the Committee re Bill C-87.
5. That Mr. Douglas Tracy be invited to submit a brief re Bill C-87.
6. That Mr. A. Bazos be invited to submit a brief re Bill C-87.
7. That Dr. I. M. Rabinovitch be invited to appear before the Committee re Bill C-87.
8. That at the termination of subject-matter consideration of Bills C-26, C-49, C-87, and Notices of Motion 26 and 31, the Committee begin hearing witnesses re Bill C-176.
9. That Messrs. J. G. McQueen, E. G. Paul and Guy Renaud of the Canadian Automobile Association, appear before the Committee on Tuesday, October 18, 1966.
10. That Messrs. Wolochow, Hanna and Bancroft of the Canadian Government Specifications Board be invited to appear before the Committee on Thursday, October 20, 1966."

On motion of Mr. Tolmie, seconded by Mr. Ryan,

Resolved,—That the Third Report of the Subcommittee on Agenda and Procedure be adopted, as read.

On motion of Mr. Woolliams, seconded by Mr. McQuaid,

Resolved,—That reasonable living and travelling expenses be paid to Mr. Robert E. Malkin, who will appear before this Committee Tuesday, October 25, 1966, in accordance with the scale of expenses approved by Mr. Speaker.

The Committee then discussed a proposed trip to Detroit at the invitation of the Motor Vehicle Manufacturers Association.

Agreed,—That the invitation of the Motor Vehicle Manufacturers Association be accepted.

On motion of Mr. Aiken, seconded by Mr. Ryan,

Resolved,—That the Chairman seek the concurrence of the House in the Committee's Third Report. (*For text of Report, see Third Report to the House*)

On motion of Mr. Mather, seconded by Mr. Forest,

Resolved,—That the July 29, 1966 letter of the Association of Canadian Fire Marshals and Fire Commissioners to the Clerk of the Committee, containing a resolution re Bills C-26, C-49, be made an appendix to today's proceedings. (*See Appendix 3*)

The Chairman then introduced Messrs. Guy Renaud, J. G. McQueen and E. G. Paul, of the Canadian Automobile Association who were appearing during the Committee's subject-matter consideration of Bills C-26, C-49, and Notices of Motion 26, 31, 38.

Following a statement by Mr. Guy Renaud, the Committee proceeded to the questioning of the witnesses.

On motion of Mr. Ryan, seconded by Mr. Mather,

Resolved,—That the submission of the Canadian Automobile Association be made an appendix to today's proceedings. (*See Appendix 4*)

At the conclusion of the questioning, the Chairman thanked the officials from the Canadian Automobile Association for their valuable contribution to the Committee proceedings.

The Chairman reminded the members that Messrs. Wolochow, Hanna and Bancroft would be appearing before the Committee on Thursday, October 20, 1966.

At 12:45 p.m., the Committee adjourned to Thursday, October 20, 1966, or to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, October 18, 1966.

● (11.20 a.m.)

The CHAIRMAN: The committee will come to order. The report of the sub-committee reads as follows:

(See Minutes of Proceedings this Issue for text of Subcommittee Report.)

The CHAIRMAN: Will somebody move the adoption of this report.

Mr. TOLMIE: I so move.

Mr. RYAN: I second the motion.

Motion agreed to.

The CHAIRMAN: During the recess Mr. Drury, the Minister of Industry, was in touch with me about a Mr. Robert E. Malkin. Mr. Malkin had a son who was killed in an automobile accident in California. Liquor was involved, not on the part of the son, but on the part of the driver of the automobile. Mr. Malkin has since become a crusader in support of the breathalyzer test and other tests for impaired driving. It was suggested not only by Mr. Drury but the Prime Minister was very anxious that Mr. Malkin appear before the committee. I have been in touch with him, he lives in Vancouver, and I have intimated to him that we would be willing to pay his reasonable living and travelling expenses while he attended before the committee. I have a motion here, if someone will move it:

That reasonable living and travelling expenses be paid to Mr. Robert E. Malkin, who will appear before this committee on Tuesday, October 25th, 1966, in accordance with the scale of expenses approved by Mr. Speaker.

Mr. WOOLLIAMS: I so move.

Mr. McQUAID: I second the motion.

Motion agreed to.

The CHAIRMAN: You have all received a copy of this letter about the trip to Detroit. I hope you have given it your consideration and are prepared to express your viewpoint as to whether or not we should accept this invitation. I may say that this morning, Mr. Bancroft of the Canadian Government Specifications Board was in the secretary's office and he spoke to me, intimating that they had been to Detroit. He felt, from their standpoint at any rate, it was a very worthwhile experience and of great benefit to them. I would be glad to hear discussion on whether or not I should be authorized to accept the invitation.

Mr. WOOLLIAMS: When is that?

The CHAIRMAN: Well, it is tentative. We could arrange the date, I imagine, to suit our own convenience.

Mr. TOLMIE: Mr. Chairman, what dates did you have in mind, sometime during the week?

The CHAIRMAN: It would be during the week, yes, I would think so. I do not think we would want to take a weekend to do it.

Mr. MACEWAN: Perhaps it could be on a Wednesday.

The CHAIRMAN: On a Wednesday, yes. I would like to have a consensus of opinion on whether or not we should take the time. There have been developments. The federal government of the United States have passed a bill about safety devices, and so on. We are going to hear evidence this morning about safety. We have had a considerable volume of evidence on this subject at other meetings of the committee. I am sure it would be a very beneficial trip but it is up to the members to decide whether they would like to go.

Mr. AIKEN: Mr. Chairman, I think this is an excellent idea. We have heard evidence, some of it conflicting, about the efforts that the automobile industry are making towards safety. I think if we go and see for ourselves it will certainly impress us more than listening to a thousand words from several witnesses. I would be in favour of going.

The CHAIRMAN: Any other comments?

Mr. RYAN: Mr. Chairman, I think it would be an excellent thing to do. We could see what developments are taking place and find out what aspects are being considered. What worries me is the intense program which is ahead of us. I do not think we could probably go before the last week in November. I think most members are pretty well tied up. Perhaps we could postpone this for a little while if it were not too imperative to get in a report along these lines.

The CHAIRMAN: The idea, of course, if we decide to go, would be to time it to suit the convenience of the majority of the members of the committee. Mr. Mather, you have some comment?

Mr. MATHER: Yes, Mr. Chairman. I was recalling the background of this. Our steering committee invited different groups to appear and give us the benefit of their information with regard to the material before us. One of the groups invited was the Motor Vehicle Manufacturers Association and they wrote back more or less inviting us instead to go and see the Ford and General Motors testing and research facilities at Detroit. I think that it was sort of a 50-50 proposition. I cannot help but feel from their point of view that it is pretty good public relations to invite people down and show them around a bit. I notice that the invitation is for a two-day visit. I think there is some practical benefit in our going as a group but I feel that perhaps we should give consideration to going for one day rather than a two-day period, if this could be worked out. I think we might gain information which would benefit us, in a shorter time than they indicate. Also, it might save us time here. I think we should go but perhaps for a shorter period than the two days suggested.

Mr. WOOLLIAMS: I think we should go, if we possibly could, for two days. If we go on a Wednesday it is not going to cut into the committee's time because generally there are not too many committees held at the end of that period, at least not on Friday, although we would miss Thursday as a committee day. Because there has been so much criticism of the car manufacturers in reference

to safety, I think we owe it to them to see what they are really doing. I believe that safety is a wonderful thing but I also believe that the human factor, which we are going into in a few minutes, is a very important factor. As a judge once said, it is an amazing thing, with a 66 foot highway, to have two witnesses on opposite sides of the road both saying they were on their own side of the road going in opposite directions at a standstill when they became involved in a head on collision. I would like to go into this with the manufacturers and then we would be able to talk intelligently in the House and in public and I think that would be fair to the manufacturers. At least they have listened to public opinion. They have started on the trend of adding devices to their cars. I think we owe this to them.

The CHAIRMAN: Thank you. Are there any other comments?

Mr. FOREST: Everyone is anxious to go for at least two days in order to have time to see what new safety measures are being developed for the new cars. I think we should leave it to the Chairman to fix a date; presumably a Wednesday and a Thursday within the next few weeks.

The CHAIRMAN: Unless someone wants to express an opinion about not going, motion would be:

That the Chairman seek the concurrence of the House in the following, the Third Report:

Your committee recommends;

- (1) That it be granted permission to adjourn from place to place

Your committee recommends;

- (1) That it be granted permission to adjourn from place to place (2) That it be authorized to sit while the House is sitting when meeting beyond the precincts of Parliament (3) That the Clerk of the Committee and the necessary supporting staff accompany the said committee.

If Mr. Aiken, who was the first spokesman, will move that and Mr. Ryan, who was the second spokesman, will second that. I will put the motion to the meeting.

Mr. AIKEN: I will be glad to so move, Mr. Chairman. The only thing I wonder about is that we are moving out of Canada on this trip. Is there any necessity to mention this or is the motion as drafted sufficient?

The CHAIRMAN: I do not know. We will ask our legal experts, Mr. Woolliams, Mr. Ryan, Mr. Tolmie? We have practically all lawyers here. I do not know whether going to the United States makes any difference.

Mr. MCQUAID: Ask the Clerk.

Mr. RYAN: There is no limitation in the motion?

The CHAIRMAN: There is no limitation in the motion.

Mr. AIKEN: In that case I will be glad to so move.

Mr. RYAN: I second the motion.

Motion agreed to.

The CHAIRMAN: This is a resolution of the Canadian Fire Marshals. They express certain opinions. I am going to suggest that the resolution be made an appendix to today's proceedings if someone will so move?

Mr. MATHER: I so move.

Mr. FOREST: I second it.

That the resolution of the Association of Canadian Fire Marshals be made an appendix to today's proceedings.

Motion agreed to.

The CHAIRMAN: Now, gentlemen, it is my pleasure to introduce to you, first, Mr. Guy Renaud, first vice-president; Mr. J. G. McQueen, secretary-general and Mr. E. G. Paul, director of traffic and safety, all of the Canadian Automobile Association.

You have received the brief and Mr. Renaud is going to be the spokesman for the group and he will be commenting on the brief. When he has concluded the other gentlemen may add something supplementary and they have expressed their willingness to answer questions of members of the committee. Without any further ado I will call on you, Mr. Renaud.

Mr. Guy Renaud (*First Vice-president, Canadian Automobile Association*): Mr. Chairman, members of the Justice and Legal Affairs Committee, the Canadian Automobile Association warmly welcomes this opportunity to present its views on highway safety to your distinguished committee.

I am Guy Renaud, vice-president of the Canadian Automobile Association and it is in this capacity I appear before you today. I am also executive vice-president of the Quebec Automobile Club. Accompanying me are Colonel J. G. McQueen, secretary-general and Mr. Ed Paul, director of traffic and safety of the Canadian Automobile Association, who are here to sustain me and, I hope, field some of your questions.

The Canadian Automobile Association, operating without profit motive, is the association of eight constituent clubs operating 57 offices across Canada. It represents 900,000 private Canadian motorists whose welfare is its main concern. It is unnecessary for us to say that we have a very lively interest in and sympathy with the work of your committee. It is therefore with genuine appreciation that we have noted the work of Mr. Grafftey and Mr. Mather in bringing this subject before our parliament and the people of Canada.

We have placed before this committee a formal submission which I should now like to synopsise and explain. We have also submitted supplementary material to show both the nature of our association and its responsibilities and to provide you with reference material that I hope will help with the committee's studies in this highly important area of road traffic safety.

The letter from our president, Mr. F. D. Jenner, who unfortunately was not able to be present today, tells of our vital interest in highway safety and suggests that we should appreciate your indulgence in broadening our submission to permit an excursion into allied fields.

During the course of its hearings this committee will hear many words and many of them very wise. Possibly there will be opinions on how quickly and painlessly to solve the oppressive problems of highway accidents.

But we in the Canadian Automobile Association do not claim to come up with a magic formula that will solve the present situation overnight. It is our sincere belief that ours is a course of action that will call for the enlistment of

all those willing to serve and prepared to devote a great part of their time to this assignment. To what extent is the motor vehicle responsible for the highway tragedies? This is a factor that we are not in a position to fully evaluate. However, in the United States this subject is receiving a very thorough and undoubtedly beneficial investigation before the House of Representatives. I know that you have this testimony and it will no doubt loom large in your deliberations.

We are fully aware of the complexity of the problem of motor vehicle safety as there are two jurisdictions involved in the standard-making processes, that is, the federal and provincial governments.

There must be the closest possible collaboration between the government of Canada and the provinces if we are to make any standard wholly effective in Canada. It might not be far-fetched to state that the public has a very limited knowledge of what motor vehicle safety standards are. Safety car devices do not only include a collapsible driving wheel or some other device that lessens the severity of body impact in the event of a collision. Other features of an automobile are equally important for its safe operation. The visibility engineered into an automobile is essential. The reliability of all moving parts has a critical bearing upon the safety of a vehicle.

The Canadian Automobile Association at its annual meeting on June 20 last, recognizing that motor vehicles should at all times be maintained in a condition of safety, called upon provincial governments to implement compulsory periodic vehicle inspection tests. It can be said, although the figure is not available, that a very substantial proportion of all motor vehicles in Canada today are in an unsatisfactory state of repair.

Members of the committee will be aware of the work of the Canadian Government Specifications Board and the first draft of this Board's study, which is entitled CGSB 97-GP. This admirable study deals with the three strata of an automotive vehicle safety code. That is, the human factor, the vehicle and the road. The chapter on the vehicle sets forth certain suggested standards for the safety features of Canadian automotive vehicles and the Canadian Automobile Association as a member of this group accepted in principle the recommendations of this chapter. It is probably not necessary, or permitted, that our association comment in detail on the CGSB code. But consideration of the work of the Board and our subsequent action in sending a telegram to the Prime Minister of Canada does emphasize our view that it is difficult to consider the role of the vehicle as an isolated fragment of the entire problem.

We have therefore asked your indulgence and understanding in requesting that the scope of our observations be extended into a considerably broader field than just the vehicle itself. With your permission, Mr. Chairman, I shall proceed into the broader field of this memorandum. Thank you.

The chapter of our submission entitled "Traffic Safety Activities of the Canadian Automobile Association" is self-explanatory. We naturally have a very great interest and involvement in this vexed problem.

In the second chapter we have made some observations on the general topic of highway safety and we have enumerated many subjects within the problem to indicate its complexity and magnitude.

Finally, we have taken the liberty of presenting for the consideration of the committee some observations and recommendations. We have taken what perhaps is the unusual course of suggesting to the committee for study a specific organization to bring about a nation-wide attack on a nation-wide problem. We are aware that this suggestion grossly exceeds our terms of reference but it is our earnest opinion that only by an imaginative and vigorous approach to the problem can we move significantly toward reversing the long-range trend of highway accidents.

In our opinion, at no time in the history of the post-war years since 1945 has public opinion and will been so solidly behind any leadership, such as that suggested, that would cement Canadians toward a common and critical objective of dealing with the crisis of the road.

We have said that virtually every nut and bolt on a motor vehicle has some relationship to safety. It follows that it must be engineered to tie in with the human element of the driver who will operate it. The road over which this human being will drive this motor vehicle should be built with due regard to the speed, weight and frequency of the traffic it must accommodate.

There is a relationship between the geometric design feature of roads and the incidence of accidents, but much more information has yet to be gathered to deal effectively with a new set of requirements for roads. Passing sight distances have a vital bearing upon the safety of highway travel. Sight distances have been changing as the position of drivers has been sinking steadily lower in today's low-slung cars, without any prompting from the highway engineer.

The highway engineer and the mechanical engineer, to meet safety requirements, should consider seriously the performance of high-powered engines and new requirements for road geometrics.

The physical characteristics of drivers and the driving aids and safeguards provided by highway engineering should be considered as one problem. Highway safety can easily be made vastly complicated and it is not the purpose of this submission to compound the confusion of the road, the wheel, the man and now, latterly, the policeman. In brief, it is one of our contentions that all elements should be brought together under one roof. The imperfections in our plan will be apparent. Any attempt to bring together all segments of Canadian society for any purpose whatsoever is difficult.

The Canadian Automobile Association believes in the concept of a national council under whose leadership all highway safety organizations would co-operate. The government of Canada will therefore have to elaborate on the formula whereby such leadership will be provided. The question might well be asked: what of the future of many worthy organizations now active in highway safety activities? There are, indeed, many excellent organizations, federal, provincial and municipal, performing invaluable jobs on behalf of highway safety. It would not be the purpose for a consultative council on highway safety to supersede any of these organizations. Rather, its function will be to strive to enlist their full co-operation by encouraging and stimulating their activities in their particular fields of operation. The total effort of all agencies, public and private, would then be given cohesion and direction and their effectiveness would be substantially extended.

The recommendation is made that there be a council on which federal and provincial government and national associations would be represented. The Canadian Automobile Association is of the opinion that the federal and provincial governments should provide financial support for the council to an extent necessary to discharge its obligations satisfactorily. Representation would be given on the council in the private sector by the election of national associations to membership. Through them industry would be represented in the council's work. An executive committee would be appointed by the council from its membership and the day-to-day activities of the organization would be cared for by the executive committee. A permanent general secretary and a secretariat would work under the direction of the executive committee. The permanent secretariat would be paid and would serve the council, the executive committee and the advisory committee.

May I refer to the tentative organization chart. The membership of these committees, apart from a member of the permanent secretariat, would be recruited from government, industry and associations and would be selected for their special knowledge. The advisory committees would have comprehensive work programs in their respective areas of activity. The suggested areas of course are entirely tentative. These subjects could be changed at will. The advisory committees would originate projects themselves but they also would be directed and instructed by the executive committee and by the council. The advisory committees would bring together existing knowledge on the various aspects of the total problem. They would define what areas of neglect there are and direct the attention of the council to these areas. They would, in turn, suggest action to remedy lack of knowledge. These advisory committees, with the approval of the council, would initiate studies and publications on safety subjects. The central office would establish a library that would be made available for reference by either the general or specialized public. Higher institutes of learning might be encouraged to give courses in some aspects of highway safety.

It will be readily acknowledged that some aspects of this program are now being carried out by existing organizations. There are many areas that need attention; for example, items such as uniform rules of the road, comparison of existing highway traffic legislation, relationship of highway geometrics to the incidence of highway accidents, the special problems of winter safety, and something which is within the present purview of this committee, safety standards for automotive vehicles.

We have listed many subjects that require the attention of the council which we propose, as collected by an authority on the subject of highway safety on page seven of our submission. We believe this will be sufficient to support our contention that there are many problems begging for a solution by some super-national agency.

Mr. Chairman, members of this Committee, we have been bold enough to ask for an extension of our terms of reference before this Committee and we would ask that they be extended to the taking of specific action by the federal authority because we believe the time is most opportune for leadership. We are of the opinion that the federal government has a larger contribution to make to this activity than has been the case hitherto, not only to improve the safety

features of the automotive vehicle but to extend the work it has already begun through the Canadian Government Specifications Board. Thank you.

The CHAIRMAN: Thank you very much, indeed, Mr. Renaud. Now, Mr. McQueen, would you like to make any comments?

Mr. J. G. McQUEEN (*Secretary-General, Canadian Automobile Association*): No, Mr. Chairman, I have nothing to add at the moment.

The CHAIRMAN: Gentlemen, I would like to suggest that the submission by the Canadian Automobile Association be made an appendix to today's proceedings.

Mr. RYAN: I move that the brief submitted by the Canadian Automobile Association be made an appendix to today's proceedings.

Mr. MATHER: I second the motion.

Motion agreed to.

The CHAIRMAN: Now, Mr. Renaud, Mr. McQueen, Mr. Paul, we come to an interesting part of the meeting where members have questions they may wish to ask. I see Mr. Tolmie has his hand up and then Mr. Aiken, and Mr. Ryan.

Mr. TOLMIE: Mr. Chairman, I think all of us realize there is conflicting opinion whether the provincial governments by voluntary agreement could provide a national safety code or whether the federal government should step in and enact a national highway safety code specifying that certain things be built into cars. Now, your brief seems to suggest that the federal government through co-operation with the provinces could, through a council on highway safety, set certain guidelines. My question is: Do you agree? Or, what is your view on the role of the federal government as far as enacting a national code setting out certain specifications for cars is concerned? The second part of my question is: What are your views on the action taken by the United States government with regard to national safety and accident service specifications?

Mr. RENAUD: Perhaps, Mr. McQueen could answer that question, if you do not mind?

Mr. McQUEEN: Well, Mr. Tolmie, first, we have tried in our brief to make this suggested consultative council, not a mandatory body but an organization to work in co-operation with the provinces. We feel, knowing the constitution of our country, that we might get opposition and I am sure you would. I think you read this morning's paper. In the *Globe and Mail* there is an article indicating some reluctance on the part of two or three provincial ministers to the federal government going too far in this field. This made me feel that what we suggest in our brief namely, that it be a matter of co-operation, rather than the federal government drawing up a highway code which I do not think would be acceptable to the provinces, is more feasible.

Mr. TOLMIE: Just for a moment let us assume that these constitutional problems could be overcome and that we could enact a federal code which would force certain safety features to be built into automobiles. Would your association support such a move?

Mr. McQUEEN: Yes, I am sure we would.

Mr. TOLMIE: What I am driving at is the question of guidelines perhaps is a good thought but I do not think it is effective enough. I think that in order to have any effective safety features it would be necessary to have a code with

certain specifications and penalties if these specifications were not incorporated into automobiles.

Mr. McQUEEN: On a nation-wide basis?

Mr. TOLMIE: Yes.

Mr. McQUEEN: Again, we feel that this would have to be done on a consultative basis with the provinces.

Mr. TOLMIE: You agree, apart from the way it is done, that it should be done to be most effective?

Mr. McQUEEN: Yes. It has to be nation-wide. Let me give you an example of what concerns us. At the moment, although I am a native Albertan, I live in Ontario and I will make a right hand turn on a red light. I have been picked up once in Montreal for making a right hand turn without thinking about it. The same applies to signs. The signs are not uniform in all our provinces. This makes it difficult for the traveller. As we all know, today, Canadians are very much travelled people, especially by automobile. I think in the interests of all the motorists of Canada, we must get together on a federal and provincial basis and set up uniformity in all these fields. I was a little disturbed by what I read in the papers. What I read in the *Globe and Mail* this morning confirms our feeling that this must be done on a consultative basis at the present time. I would not like to express my personal view of how it should be done but we were trying to be practical in presenting a solution that we think might work.

Mr. TOLMIE: Just to sum it up so that there is no misunderstanding, my simple point is this. If it is possible, through constitutional means, to enact a national highway traffic safety code, setting out certain specifications with regard to automobiles, would you consider this to be the most effective way to gain your objective?

Mr. McQUEEN: It would be ideal and we think this is necessary.

Mr. TOLMIE: I have just one more point, Mr. Chairman. I realize that now we will be having as standard equipment, dual brake systems, better tires, padded dashes, and collapsible steering wheels. It has always been of some surprise to me that these innovations which now seem so necessary have been so long in coming. I know that public pressure has been instrumental in bringing about many changes. My question is this. Does it mean, now the car manufacturers have started along this road that they will continue to pursue it and introduce more safety features as long as public pressure and government pressure are brought to bear on them.

Mr. McQUEEN: Well, I cannot speak for the motor vehicle manufacturers. I should think, in view of the present trend of public opinion, they will certainly go ahead and do a good job on this. I am sure they must.

Mr. TOLMIE: Do you know if there are more safety features contemplated in the design of cars?

Mr. McQUEEN: Not to my knowledge but you were speaking, Mr. Chairman, of attending at Melford. I had the opportunity of spending two days going through there some months ago. I am very glad to hear you are going because I think you will be most impressed. We also visited the Ford proving ground—this was the automobile association people. I feel quite sure you are going to be impressed with what you see there. It was really a revelation to me.

The CHAIRMAN: You had another question about the United States law, also, did you not?

Mr. TOLMIE: Yes, I am sorry; thank you Mr. Chairman. The United States government has shown some leadership. They have enacted a national code. I was wondering what your association's views were with regard to this particular law?

Mr. McQUEEN: We support it very much, sir. As a matter of fact, the Canadian Automobile Association, as you will see in the back of the brief, is allied and our clubs across Canada are affiliated with the American Automobile Association. I might say the American Automobile Association had a lot to do with bringing about this code. The association worked very closely with the committees of the United States government on this very subject.

Mr. TOLMIE: Your association would be happy if we could enact similar legislation in Canada?

Mr. McQUEEN: Yes, yes we would.

Mr. TOLMIE: Thank you very much.

The CHAIRMAN: Mr. Aiken?

Mr. WOOLLIAMS: I wonder if, before Mr. Aiken begins, I could just ask one question. I do not want to butt in on Mr. Aiken's time but this is as a result of what Mr. Tolmie asked. Do you mind, Gordon?

If I might just digress for a few moments, I am very happy to see you here today Mr. McQueen, since you come from the City of Calgary and I know your work in this field. You raised a point with reference to uniformity. I think in your work you have probably found, certain matters—take the insurance act as an example—this is the main point I am going to make—that it is legislated by the provincial governments but the legislation is uniform across the country because the uniformity principle has been accepted. The provinces got together. Do you not feel from your practical experience, not as a legal or constitutional expert, that it is possible to get a uniform driving code across the nation without much difficulty?

Mr. McQUEEN: Yes, Mr. Chairman, I do. I think you might be aware, Mr. Woolliams, that the Automobile Association is very much involved in urging the provincial governments to accept this reciprocity of insurance with what is known as the pink card. This provided for the acceptance of pink card proof of insurance say, for a man from British Columbia involved in an accident in Ontario. This was established very well indeed.

Mr. WOOLLIAMS: Thank you very much.

Mr. AIKEN: Mr. Chairman, my questions are along the same line as Mr. Tolmie's. Do you see this national body as being a private organization with perhaps government support and assistance or do you see it as being a government body?

Mr. McQUEEN: No. It would not be a private body and it would not be a government body, except we are suggesting as the public does, that the government undertake the secretarial work and the financing. As we say, mutually sustaining with equal powers.

Mr. AIKEN: Preliminary to my next question I would mention that another committee of the house is now considering the transport bill. One of the clauses or sections in that transport bill relates to motor vehicle inter-provincial traffic. While I was present at a briefing on this bill I was informed that the government does not intend, at the moment, to act upon this, but they have included it in the bill in the event that in the future they can reach some kind of agreement. Would you think that perhaps this section 7 of the transport bill might be used now if it were limited to safety measures on the highways without going into the other problems that might arise? It would be strictly on safety.

Mr. McQUEEN: I would have to think about this. I am not too familiar with the transport bill, although I believe it covers all forms of transportation.

Mr. AIKEN: It has one separate part relating to motor vehicle traffic which the federal government, at the moment, does not take any jurisdiction over at all. It has been explained that they are not going to act on it at the moment without provincial consent but that it can be used after consultation. I occurred to me that this might be the vehicle for bringing about the body you suggest, with a national code of some sort for safety measures.

Mr. McQUEEN: Yes, that is possible. I would like to stress again, Mr. Chairman, that we keep using the word consultative and we strongly believe in this. I would repeat that if you read the *Globe and Mail* this morning you will see why we feel so strongly on this consultative point.

Mr. AIKEN: Is there any body now existing in Canada that you think might administer the sort of code you are referring to.

Mr. McQUEEN: Well our suggestion, as you will note in the brief, is that possibly it could be an extension of the work of the Government Specifications Board. The government we feel is the best party to undertake this. There are—I will not name them—as I am sure you are aware, Mr. Aiken, four or five organizations. We belong to three of them. Our own association has its own safety work. We consult and work together with these three or four other groups. They are all on different subjects and we feel it should all be brought under one umbrella. I will name one as an example. You have heard of the Traffic Injury Research Foundation. I happen to be an officer of that organization as a representative from the Canadian Automobile Association. They have a specialized field—the medical aspects of traffic accidents. There is the Canadian Good Roads Association that studies highway engineering, the safe design of roads and so on. We feel all this should be brought under one umbrella, under this consultative council we have suggested with leadership from the federal government and the provincial governments working together.

Mr. AIKEN: You feel then, that it requires more than just a voluntary association of a society such as yourself? You feel it requires legislative action to put some teeth into any regulations that are set up?

Mr. McQUEEN: We feel that the deliberations of such a council would produce proposed legislation which I think would be good for all of us, because what the Good Roads Association might think is good should tie in with the medical aspects or our views or those of the highway council.

Mr. E. G. PAUL (*Director of Traffic and Safety, Canadian Automobile Association*): We should, perhaps, mention that this committee would serve also

to avoid duplication of research. They could make use of research being done not only here in Canada but in the United States and throughout Europe that is applicable to Canada. One car manufacturer, for instance, has recently given a grant of \$10 million to one university in the United States to do certain research. Well, we should be able to make use of that and this committee could correlate all this and also establish a library. It could make use, as Mr. McQueen mentioned, of the Canadian Good Roads Association and the research they do or that done by T.I.R.F. as well.

Mr. McQUEEN: Well, Mr. Aiken, actually to put it in a practical way, all these public service groups that are doing a wonderful job have a lot of information but it is not being brought together. That is the point. It is not being brought together.

Mr. AIKEN: I have just one final question. It is, perhaps, more of a suggestion. I think the most effective group working in Canada right now is the Council of Canadian Resource Ministers which consists of the resource ministers of the federal government and those of all the provinces. I am particularly interested in water resources and pollution. There is to be a national conference, next week, on this subject which it is hoped will result in both federal and provincial legislative action. It seems to me that a council of highway or transport ministers might meet the need that you have in mind.

Mr. McQUEEN: Yes, it could, along those lines. As I say we have put forward these recommendations knowing there may have to be a bit of juggling. But, we do want to stress our feeling that it calls for leadership from the federal government and that it should be permanent. As I understand it, the Canadian Government Specifications Board is a temporary set-up; it is not permanent. We feel there should be something set up on a permanent basis because the situation is not going to improve and we are going to have more and more cars on the road.

Mr. AIKEN: Thank you, Mr. Chairman.

The CHAIRMAN: Mr. Ryan, Mr. Guay and Mr. Mather have indicated they want to ask some questions.

Mr. RYAN: At page 5 of the C.A.A.'s submission, paragraph 2 states that almost 5,000 people died on the highways of Canada; in 1965, 4,894 Canadians. Is it possible to get a breakdown on this? How many were pedestrians? How many would be in motorcycle accidents? How many would involve a car or truck?

Mr. PAUL: Yes sir, that is quite easy to obtain. The Dominion Bureau of Statistics has all these facts and figures.

Mr. RYAN: Could you get them, for the record?

Mr. PAUL: Yes, sir.

Mr. RYAN: Would any of you gentlemen be in a position to advise us, right off, whether the recent increase in motorcycles on our roads, particularly the smaller type of motorcycles, has created an additional menace? Have they brought about any great increase in deaths in accidents?

● (12.10 p.m.)

Mr. PAUL: Well, of course, the increase in motorcycles has been rather unexpected these last three or four years. They are increasing by 100 and 200

per cent per year. This boom in cycling caught everyone unaware and consequently now people are taking a harder look at motorcycles. As you can see from our brief, some of our clubs run motorcycle driver training courses now. They have undertaken driver education for years and now they are getting into motorcycle training as well. There are certain safety features needed on the motorcycle and the driver as well to cut down on the number of incidents of fatal injuries in motorcyclists. I drove one for years and found that if a motorcycle gets involved in a collision with a car there is really going to be only one person hurt and that is the cyclist. The increase in cyclists would increase the fatal statistics given here but we cannot visualize in the future any drop in the popularity of these machines because they are so cheap. They are within the reach of university students and so on.

Mr. RYAN: Do you think, from your recent experience there is cause to feel any great alarm about the situation particularly with respect to motorcycles?

Mr. PAUL: Well, we have not gone into motorcycles on a national basis. It has all been on a provincial basis. Our provincial clubs are promoting provincial legislation. Some of those clubs are quite alarmed at the increase.

Mr. RYAN: But you, as a motoring association, do take motorcycles under your wing, as it were? You are interested in them.

Mr. PAUL: Yes, we are interested for a number of reasons, of course. One is for the protection of our members. If a motorist and a cyclist get involved in a collision the liability is just as great as if two cars were involved.

Mr. RYAN: Or a car and a pedestrian?

Mr. PAUL: Yes, or a car and a pedestrian. We are also involved in pedestrian safety for that reason as well.

Mr. RYAN: Now I found it rather surprising to read at page 6, in the last paragraph, the last three lines:

...nor is there a cohesive system yet available in Canada for the exchange of highway accident data.

Mr. PAUL: Well, really there is not. In the *Globe and Mail* this morning, there were comments about uniformity in police reporting across Canada. This leads me to believe that you can submit one type of report in one province and go to the next province and submit another one. I do know, where there has been an accident and a person complained he was injured but refused to go to hospital, that some police forces still put him down as an injured person in their report. In other areas, if a person refused medical attention at a hospital or if the injuries are not of a certain seriousness, according to the medical profession, then he is not put down as an injured person.

Mr. RYAN: It would seem to me that it is of intense interest to us, and to everybody in this country, that we have standardized accident reporting so that we can properly assess what we are up against.

Mr. PAUL: Well, of course, there again it has been a provincial responsibility.

Mr. McQUEEN: Mr. Chairman, I would add to that. At our last pedestrian program judging, one of the judges was Chief Adrian Robert of the Quebec Provincial Police. He asked us if we would take this up with the Dominion Bureau of Statistics and we have made representations to them now to try and

call a conference of all provincial authorities to establish a uniform accident report form. This is receiving consideration at the moment.

Mr. RYAN: Have you, as an association, ever tried to bring this information into a central file? Have you ever tried to perform that service?

Mr. McQUEEN: No, we have not. That is really a professional statistician's job and, as I mentioned to you, we have been in close consultation with D. B. S. on this subject. I understand there is a possibility of a conference being held in the not too distant future. It would bring all police authorities and motor vehicle administrators across the country together and seek agreement to this common form.

Mr. RYAN: Has there ever been any attempt to bring about a standardized form?

Mr. McQUEEN: This is an attempt by them, sir.

Mr. RYAN: This is the first? Would you have this in mind as one activity of the consultative council you propose?

Mr. McQUEEN: Yes.

Mr. RYAN: This would be one of their activities?

Mr. McQUEEN: This would be one of their activities.

Mr. RYAN: You do not think it would be better to have it under the aegis of the Department of Industry's Specifications Board, for example. I believe that board is considering setting up a code for the whole of Canada with respect to automobile construction and design?

Mr. McQUEEN: Yes.

Mr. RYAN: Would this type of thing tie in if that were to come to pass?

Mr. McQUEEN: This is a task which we see as part of the consultative council. This would be one of its tasks. I think if you look at the chart on page 17, sir, you will find we have covered most of those subjects.

Mr. RYAN: Would you prefer to see this council avoid duplication of research?

Mr. McQUEEN: Yes.

Mr. RYAN: Or would you prefer to see that undertaken by the federal government's board?

Mr. McQUEEN: Frankly, in our thinking, we see the Specifications Board as part of this council, or, in fact, as we state in the brief, an enlargement of the Specifications Board could form the council. It would be an extension of their responsibilities and would provide continuity.

The CHAIRMAN: Mr. Guay?

● (12.17 p.m.)

(Translation)

Mr. GUAY: First of all, I entirely approve of the efforts which have been made to increase road safety. However, what is most important of all is reducing the number of accidents.

Mr. RENAUD: What we seek above all is the education of the public in respect of road security and at every possible level in society. In fact, almost all of our clubs have a system which they call the school patrol system, as well as

the education of young people at the high school level, that is driving instructions. And then, we have the pedestrian protection plan whose purpose is to help municipalities to improve their protection service for those people coming under them.

This is the basis of our safety program. However, there is not only education. We also have the application of the law itself. We have attempted to reach some uniformity wherever possible, such as highway engineering and car safety. In our mind, all this, however, is based on the education of the people, we have to make them security conscious.

Mr. GUAY: However, Mr. Renaud, I believe there is a certain amount of confusion. You would like a single highway code. A consultative council should be set up in this country according to you?

Mr. RENAUD: Yes, we should have under one roof all interested parties, those parties who have any interest at all in road security, road safety. There are various aspects of course to this matter, but that which is of particular concern to us is highway safety, but there are others that are related matters.

Mr. GUAY: But what is the most important factor of all, according to you? What is the—

Mr. RENAUD: Personally I feel that the human element is the determining factor as far as accidents are concerned. For instance, if we have a badly engineered highway, if we have a road which is not built according to rigid safety specifications, here again, you have causes of accidents, but, generally speaking, the human element, as far as I can see is largely responsible.

Mr. GUAY: That is why I was putting that question, because I wanted to relate it to another aspect of the matter. In any case of fatal or near fatal accidents, does your association always look for the real cause? Do you really look for the actual reason of the accident? We have all kinds of accidents where people are killed or not killed, but where sometimes we merely have physical damage, but sometimes we really don't know what the cause was.

Mr. RENAUD: That is what we are thinking about. We are suggesting the setting up of a national road safety organization. We would look for the causes of car accidents. There is a great deal of information available which is there, available to us, but which is not interpreted however, and which is made no use of because there is no actual organization competent to look into it.

Mr. GUAY: There are a large number of accidents which are unexplainable when the car turns over, for instance, or sometimes when a car runs into another. Sometimes we have really no damage involved, but in those cases, should not the municipal government look for the actual cause of the accident. Should they not push the investigation a little further in order to determine the actual cause? Because, this being the case, I think we could have statistics and we could be working on something which is actually more concrete and draw conclusions from that and do what is necessary.

Mr. RENAUD: That is why the safety organization at the national level would have a very useful role to play because we would be there bringing under the same roof, all these organizations concerning highway safety.

Mr. GUAY: Do you believe that by centralizing this—and I have reference here, to what the *Globe and Mail* says this morning—do you think that by centralizing all these powers—all this research, that is—do you think that we will be able to go to some remote part of a county, or of some little parish where we had a little accident, do you think that will be better done than if it came under the provincial government, which is not so far away, and which could coordinate that research more easily.

(English)

Mr. PAUL: Mr. Guay, perhaps I could answer that question. It is difficult for municipal governments to train adequate personnel to thoroughly investigate automobile accidents. Police personnel go out to the scene of an accident and they just report the obvious things, what witnesses there are and so on. They do not have the professional mechanics to go out and tear the car apart sort of thing. We are suggesting that this committee would have either teams of personnel to investigate this or perhaps initiate research on an area basis.

Every accident does not have to be investigated so thoroughly. You can get a general idea of what has taken place just by investigating 500 out of 10,000 accidents. Half of these accidents occur on a gravel road where a car for no reason goes off the gravel road and upturns. The driver says that another car blinded him with headlights. But, with teams to investigate these accidents it could really be determined whether it was a tie-rod end that was weak, a tire that was deficient or any of these things. But the municipal governments could not possibly investigate them thoroughly enough to give any one a real opinion as to what had actually occurred. It has to be, basically, federal leadership in this particular field of research and correlating all this research. Much has been done throughout the world by professionals investigating automobile accidents quite thoroughly. This committee could gather all this information and correlate it. I have, in my experience, investigated many, many accidents. I was on what they refer to as "on call" for fatal accidents for years. Every time there was an accident within the Corporation of the City of Ottawa and a policeman thought a person was going to die, I was called out. We put a little more effort into it if we thought it was going to be a fatal accident. It was not with the thought in mind that we were going to determine what the real cause of the accident was. It was with the thought in mind that we would be prepared in case of criminal charges or civil charges, so we would not be embarrassed as policemen in front of the courts. How can you ask a little town with one or two police officers to have them to be so highly trained that they can by themselves determine the actual cause of an accident.

(Translation)

Mr. GUAY: How do you explain that nothing at all has been done; we hear figures quoted here and there, but are there teams already set up in any province whatever, to determine what action there is to take when we have, for instance, fatal accidents; do people go on the spot, do people examine the car? Is this done in certain zones or in certain areas in this country or is there nothing done at all?

(English)

Mr. PAUL: Well, to my knowledge, sir, there is very little done. If there is any of it done, it is just done on a local basis by some organization that will go out and investigate one or two thoroughly. If I may just mention a point in case. Where there is an automobile in a collision with a fixed object, a tree or a post, with no witnesses, then the policeman arriving at the scene of the accident has to take the person's word for what occurred, if any people are alive. But, for instance, if he looks at the skidmark and there are X number feet of skidmark and that indicates to him that something else has occurred then he might call out an expert. But, where do you get the expert? In Ottawa we are particularly fortunate that we have the R.C.M.P. lab here. They have experts. But, how about Three Rivers? How about Manotick? So many accidents go by the board where it is obvious that it is something other than what the person says but then there is no thorough investigation into it. Some provinces are setting up police schools where policemen are sent down to be, what they consider, highly trained. They are highly trained in police work and police work is all-inclusive with Criminal Code, highway traffic accidents, by-laws and so on. So, how highly trained can you expect these people to be. Their education standards are such that they do not have degrees and are not capable of absorbing all this. We think that this committee we are suggesting can do all this. It could compile all this information and tell us whether the accident occurred because of the geometrics of the road, or perhaps the driver's attitude, or for medical reasons. T.I.R.F. could perhaps tell us if it was medical. In the Government Specifications Board report, T.I.R.F. points out a little thing that probably will amaze every committee member here, that is, a person who smokes three cigarettes while driving with the windows of his car closed is the same as being at an altitude of 7,500 feet. That amazed me when I read it too. But a group of experts told us this and, consequently, I make sure that my car windows are open all the time.

● (12.30 p.m.)

Mr. McQUEEN: Mr. Guay, on that subject—and this might be of interest to you—I was fortunate enough to be in England last month and I discovered that in the Birmingham area they have set up an investigating team just as an experiment. For every accident within a 50-mile radius they send for the coroner, a police officer and an engineer. They are compiling statistics for this group because this is an experiment. I might suggest that if this consultative council were formed they could finance and operate a group which could be sent to a certain part of the country to carry out such experiments, because our roads are all the same and our people all drive the same. This might be another idea. I think the Birmingham idea in England is excellent. So, they were thinking along your lines too.

Mr. PAUL: I might add just one further thing. No one incident causes an accident; there is always more than one, perhaps two, three or four. Perhaps a man had a dirty windshield and his vision was restricted or he was over-driving his headlights with a dirty windshield; now, there are two incidents that might have caused an accident. Perhaps he had had a couple of drinks, or three.

(Translation)

Mr. GUAY: One last question to answer a question I asked a while ago. You said a moment ago that in certain municipalities we have only one or two constables who would be able to inspect the scene of the accident. But following each of these accidents, what we will be able to note is that we have an insurance company or two insurance companies who send their adjusters. They are involved in this. These insurance adjusters appear to be competent. Could they not make a more detailed report and look more closely into the actual cause of the accident?

(English)

Mr. PAUL: Well, sir, yes, insurance companies do but for a selfish interest, perhaps, and they may not look as far as we would possibly like them to. They are in a competitive field. Now this consultative committee could make use of this type of information, yes, but I do not think we could leave it up to insurance companies to tell us what the causes of accidents are. They are as interested in safety as we are by their activities in safety and by supporting the different safety organizations. No sir, I do not believe that we could. What we are suggesting is that this consultative committee be formed and they have this information available. Then this information goes out and Chief Tom Jones of the little town gets this information and says, well now, this might be the answer and we will do this or we will do that and so on.

The CHAIRMAN: We have passed the hour for adjournment and Mr. Mather indicated he has some questions. Perhaps Mr. MacEwan has some as well. Probably we could continue.

Mr. MATHER: Mr. Chairman, my question will take perhaps a minute and with the co-operation of the committee I would like to ask it. I was going to say that it would seem pretty clear to me that whatever the cause highway slaughter does not recognize any boundaries, whether they are municipal or provincial. I think the toll from highway accidents is increasing in line with the increased mobility of Canadians, whether they live in British Columbia or Prince Edward Island or wherever it is. The last figures I have indicate that we are killing people, or they are being killed now, at the rate of about 100 persons a week in Canada on the highways or in traffic accidents, and I think something in the order of 3,000 a week are being injured. I believe the total financial toll is over \$600 million a year. This is going to increase with the number of people driving cars and the more leisure time we have, unless something is done to correct it.

I felt that the C.A.A. had made a very good presentation and I think the main point they make is this one asking for consideration for the establishment of a consultative council of all concerned to meet this problem. They called it a National Consultative Council, it might be called a Canada Consultative Council, if that would make acceptance easier in different parts of the country. The fact that we are meeting, as we are here, and discussing this, or that the federal government has a Government Specifications Board, and the inter-provincial meeting is taking place today, all shows that there is a recognition of the need to do something. My question is, has the proposal of the C.A.A. on the consultative council already been made to the federal or provincial authorities. If so, has there been a response to the proposal or, if it has not been made, is it

being made to our committee with the thought that we would take it into consideration in any report we make to Parliament.

Mr. McQUEEN: Yes, Mr. Mather. This is our first presentation. As you will see in the brief, we submitted in broad outline the hint, if you want to call it that, to the Prime Minister in our telegram. This was our opportunity, we felt, to get it into the federal government channels. Now those of you who are familiar with our association are aware that all our provincial associations will be supporting this and of course we will be advising the various provincial governments that this is our stand.

Mr. MacEWAN: I think most of the questions have been answered regarding this proposed council. I would just like to ask to whom a report would be made by this council? Would an annual report go from the council to the federal government as well as the provincial governments, or just to whom would a report be made?

Mr. McQUEEN: Well the report would be made to all levels of government because they are all part of it—all members, you might say, and the members would be the federal government, the provincial government and possibly five or six national associations involved in this work. They would all have parts. We would all sustain each other.

Mr. MacEWAN: I think Mr. Tolmie led off asking whether a national safety code would be the thing. Of course, this step you are proposing would be an initial step to be carried out. It would be a move made by the federal government through the Canadian Government Specifications Board. Of course your hope is that at some time a national code could be effected.

Mr. McQUEEN: We feel this is the only practical way that this can come about in view of our constitution because, as I say, we are all part of this, the federal government, the provincial government and the industry represented through these five organizations. I feel that is the only way we would ever get agreement to set up such a thing as a national safety code.

Mr. MacEWAN: With this council, of course, the reports you would make to the various levels of government plus the other organizations in the country, would include the various areas to be covered, as outlined on page 17; education, medical, road construction and so on. I take it that there would be nothing mandatory in these suggestions by the council but, in most cases, it would be up to the Department of Highways and the governments of the various provinces to effect these suggestions.

Mr. McQUEEN: Yes. I think we point out that it would not be mandatory. It would be to collate, research and to make the information available to the various jurisdictions, the provinces and what have you, and through this council it might be the solution to get agreement between provincial governments and the federal government on the question of setting up the example you point out, a national highway code which we think, in this case, is absolutely vital to all of us as Canadians.

Mr. MacEWAN: Mr. Chairman, Mr. Paul was mentioning a traffic expert. A definition that is sometimes used is that an expert is a man from out of town. I do not suppose that is a correct one. That is all I had to say sir, thank you.

The CHAIRMAN: Mr. Forest?

● (12.42 p.m.)

(Translation)

Mr. FOREST: Just one question. According to your brief, your recommendation is to set up this consultative council with federal representatives, representatives from the provincial governments and representatives from other organizations involved. This is a very good solution, but that might be a very long term one. Before this thing is set up, I think we might have to wait for a little while. What are the immediate steps suggested by your association in order to attempt to correct the present situation? For instance, would your association favor federal control exercised through legislation to establish standards for the improvement or the manufacture or the importation of cars such as proposed by Bills 26 and 49? Would you support such legislation? Or legislation of another type which could be applied in the short run?

Mr. RENAUD: Certainly, because any measure designed to improve safety is per se, good. However, there is another aspect. As you probably read in this morning's *Globe and Mail*, the provinces have realized the need for having a certain uniformity in highway legislation. These are all various aspects of the same question.

Mr. FOREST: But the federal government's responsibility will be to see that this would be applied throughout Canada.

Mr. RENAUD: Yes, the federal government should concentrate all the strength of the provinces and of the various organizations involved to realize something concrete in the field of highway safety.

Mr. FOREST: Are you in favor of immediate legislation to impose specifications, safety specifications on car makers?

Mr. RENAUD: Certainly.

(English)

The CHAIRMAN: Gentlemen, I think that probably concludes the questioning and nothing remains but for me to thank you, Mr. Renaud, Mr. McQueen and Mr. Paul for your presentation this morning. You must have gathered from the numerous and very searching questions that were asked that the committee are very much interested in your brief and on behalf of the committee I want to thank you most sincerely for your presentation and for your appearance here this morning.

Mr. RENAUD: We want to thank you, Mr. Chairman, as well as members of the committee, for having given us this important day to appear before you.

The CHAIRMAN: May I mention, before we adjourn, that Messrs. Wolochow, Hanna and Bancroft of the Canadian Government Specifications Board will appear before the committee on Thursday of this week at 11 o'clock. May I say that we have arranged with Mr. Deachman that we sit regularly at 11 o'clock. I thought that would probably be most convenient for members. If there is no further business then the meeting is adjourned.

Appendix 3

ASSOCIATION OF CANADIAN FIRE MARSHALS & FIRE COMMISSIONERS

July 29, 1966

Clerk of Justice and Legal Affairs Committee,
Committee Branch,
House of Commons,
OTTAWA, Ontario.

Dear Sir,

At the 1966 Annual Conference of the Association of Canadian Fire Marshals and Fire Commissioners held in Vancouver, B.C., June 27-July 1, the following resolution was passed with respect to fire safety in highway travel and in automobiles. Our association has requested me to direct this resolution to the Justice Committee of the House of Commons and it would be appreciated if you would bring it to the attention of the Chairman, Mr. A. J. P. Cameron, M.P., for such action as he and the Committee deem advisable.

WHEREAS: The matter of automobile safety on the highways, and in the construction of automobiles, is of National concern and currently under study by Committee of the Dominion Government, and

WHEREAS: Fire safety in highway travel and in automobiles is of concern to the general public and all governments, and

WHEREAS: Standard automobiles without deluxe features are constructed and supplied with only one ashtray in the driver compartment, and

WHEREAS: Many fires are caused by carelessly discarded cigarettes and matches, and

WHEREAS: It is an offence in most of the Provinces and Municipalities to throw any burning substances from any moving or stationary vehicle.

THEREFORE BE IT RESOLVED: That the Association of Canadian Fire Marshals and Fire Commissioners petition the Committee concerned with automobile safety to include in mandatory requirements that all new automobiles sold in the Dominion of Canada be equipped with ashtrays to a minimum of two (2) ashtrays in each driver and passenger compartment, as in the case of sedans.

If you will apprise me of such action as may be taken by the Justice Committee on this matter I will make this known to the members of the Association of Canadian Fire Marshals and Fire Commissioners.

Yours truly,

D. E. Barrett,
Secretary-Treasurer,
Association of Canadian Fire Marshals
and Fire Commissioners.

Appendix 4

SUBMISSION
to the
STANDING COMMITTEE
on
JUSTICE AND LEGAL AFFAIRS
of the
HOUSE OF COMMONS
by the
CANADIAN AUTOMOBILE ASSOCIATION

October 18, 1966
Ottawa, Ontario

**TRAFFIC SAFETY ACTIVITIES OF THE
CANADIAN AUTOMOBILE ASSOCIATION**

The Canadian Automobile Association was established in 1913 and, for more than half a century, has been the voice of the private motorist in Canada.

Eight constituent clubs of the association maintain 57 offices in Canada and serve a membership of 900,000.

The Clubs of the Association provide a wide range of services with which the Members of the Justice and Legal Affairs Committee will be familiar. Perhaps not quite so well known, however, is the wide range of activities conducted by the CAA Clubs relating to highway safety.

Each constituent club has a program of promoting sound highway legislation, much of which involves specific traffic safety recommendations and safeguards. The legislative programs of the provincial associations are co-ordinated through the 13-man Policies & Resolutions Committee of the national office. Throughout the more than half-century they have been in existence, the clubs have advanced recommendations to provincial legislatures that have benefited not only their members but the motoring public at large.

The automobile clubs began initially as a motoring service principally to repair the faltering internal combustion engine and to guide motorists to their destinations along the primitive paths of the early century. In fact, many clubs erected road signs, largely guide signs, for the benefit of their members and fellow motorists.

Roads and the automobile population grew briskly during the 20's and exploded with phenomenal force during the post-World War II period. Unfortunately, the growth of traffic accidents showed commensurate increase.

The clubs of the Canadian Automobile Association moved individually, and collectively, during this period to protect the lives and properties of the motorist.

These programs are largely self-explanatory:

Driver Training Courses:

These courses are for the teen-age driver and the adult driver. In co-operation with other agencies, CAA turns out qualified instructors to teach Driver Training Courses.

"Sportsmanlike Driving"

The CAA has made available a Canadian Edition of a standard textbook on Driver Training Practices and Procedures.

Planned Pedestrian Program

CAA is the only organization in Canada with a program devoted specifically to protecting the pedestrian. An independent board of judges evaluates municipal safety programs, traffic engineering and law enforcement as applicable to the pedestrian. Assessments made by the CAA secretariat and board of judges analyze municipal safety programs, make public awards for merit and make these confidential assessments available to municipalities, from which they may pattern their future pedestrian safety programs.

School Safety Patrols

With the firm conviction that safety habits and attitudes begin at an early age, the CAA clubs sponsor School Safety Patrols. The clubs foster the movement through training and provide equipment and supplies to the Patrols. Each year, CAA sponsors a National Jamboree in Ottawa with delegates present from across the entire nation.

Highway Safety Research

The CAA clubs encourage research on highway safety, including support of and co-operation with the Traffic Injury Research Foundation. One constituent club this year underwrote the cost of research of breathalyzer testing.

Motorcycle-Driving Training

Because of the growing problems associated with the operation of motorcycles, the Canadian Automobile Association clubs, in some instances, are offering training courses for motorcyclists.

Emergency Services on Highways

The CAA constituent club in Toronto operates a system of telephone call boxes along the high-speed freeways of Metropolitan Toronto which enables the stranded motorist to obtain emergency services immediately and thus minimize the perils of collision.

In addition, many CAA clubs operate road patrols providing emergency assistance where needed to any motorist.

Community Safety Programs

The CAA constituent clubs co-operate with any worthy form of regional or community traffic safety activity. They lend their support to municipal and provincial safety clubs in the deep conviction that there cannot be too many people and agencies concerned with and active in the highway safety field.

The Canadian Automobile Association enjoys a very wide range of connections with organizations in Canada engaged in the same general areas of highways and highway transportation. It also has formal affiliations with many similar associations abroad.

THE PROHIBITIVE PRICE OF MOBILITY IN THE CANADIAN COMMUNITY

During the past score years, safety organizations have sought to impress upon the minds and hearts of men the spiralling price for mobility on the road. But the price in dead, property loss and anguish continues to rise. There is, understandably, much that is emotional. So frequently the facts are not related to objective criteria.

But the simple fact remains that 4,894 Canadians died on the highways in 1965. The fact requires little other explanation. Any such drain on human resources is a problem of national magnitude and requires positive and vigorous leadership and co-operation of all segments of the Canadian community, public and private.

There is not one iota of doubt that with leadership and concerted action, the tide of highway losses can be reversed; and substantially.

No reasoning person can accept the premise that the price we now pay, in human lives and property damage, for motorized transportation is irreducible.

Highway safety organizations have developed, and now widely use, three basic divisions for an attack on highway safety:

Education

Inculcating sound attitudes in young and old alike to the dynamics of automotive vehicle transportation creates a respect for the dangerous potentialities in the modern automobile and inevitably results in fewer accidents. High school driver education courses have demonstrated their value in teaching the young to drive carefully.

The re-training and re-testing of licensed drivers also has had encouraging results. Human error in undoubtedly the major cause of highway accidents and education is a key to moulding human beings to safe driving.

Engineering

A number of individual engineering areas relate to highway safety; the characteristics of roads are known to influence the incidence of accidents on any specified stretch of road or street. Traffic control devices, signs, signals, markings influence the rate of accidents. But the precise relationship between the geometric factors, such as sight dis-

tances, curves, widths of shoulders, lighting, channelization, curvatures, crosswalks, controlled access, has yet to be fully developed by highway scientists. Despite the elaborate protection provided on today's freeways, accident rates remain too high. A great deal more research needs to be undertaken on the relationship of highway design to highway accidents.

Enforcement

Many enforcement officers contend, and with good cause, that this is the most encouraging avenue along which to approach means of reducing highway accidents. This section is one of the most contentious and yet one of the most promising fields in which vigorous action is essential.

While it can be stated that much of the research that has been done on highway accidents is inadequate and sketchy, a considerable amount of useful and useable data is now being made available to Canadian administrators and safety practitioners. But it is doubtful if this information is also being made available to the many factions involved in highway safety, nor is there a cohesive system yet available in Canada for the exchange of highway accident data.

The nearest that administrators have come to establishment of a priority rating for action comes informally from Alberta's Minister of Highways, Hon. Gordon E. Taylor, last year's President of the Canadian Good Roads Association.

Mr. Taylor asked 30 traffic specialists to rate priority action to be taken to cope with traffic accidents. Among the group were vehicle administrators, traffic engineers and police officers, equally divided. The replies were as follows:

- Stricter enforcement of traffic laws;
- Higher standards of competence by all persons involved in highway departments, traffic functions, police, judiciary, transport departments;
- Driver re-examination;
- More safety features incorporated into automobile design;
- Make existing drivers' licence tests stiffer;
- Compulsory vehicle inspection;
- Increased public education in safety;
- Improved highway design standards;
- Uniform traffic signs, signals, markings, lighting;
- Increased research in safety;
- Uniform motor vehicle traffic laws;
- Improved legislation on drunk and impaired driving;
- Driver education in schools;
- Build more freeways;
- Uniform pedestrian code;
- Improved co-operation among all bodies involved in traffic safety (police, highway departments, judiciary, etc.);
- Restrict teen-age drivers;
- Maintain detailed cross-index files on all drivers in the nation;
- Separate all pedestrian traffic from automobile traffic by overpasses, fences, sidewalks, etc.;

- Eliminate all two-way roads and streets;
- Eliminate all on-street parking;
- Eliminate all railway level crossings;
- Improve snow and ice control;
- Create a national safety organization to advise, investigate, publicize all safety matters;
- Separate all roads and streets;
- Improve highway traffic legislation;
- Restrict use of roads and streets by highway trucks;
- Change present speed limits.

After reviewing all the suggestions made by these capable and experienced gentlemen, one can come to the conclusion that there is no royal road to safety and that there is great, and largely unfulfilled, need to bring together and co-ordinate many safety activities throughout Canada.

On the specific item before the Committee—safety features that could be installed in a vehicle—there is much to be heard and studied. A number of devices and adaptations of present design could be considered. It is worth noting that this subject has been extensively reviewed at considerable breadth and depth in the United States. Of possible immediate concern, as related to the vehicle, is some review of restraining devices, forward compartment energy absorption, energy absorbing steering control system, dual operation of brake systems, tire and safety rims.

OBSERVATIONS AND RECOMMENDATIONS

The Canadian Automobile Association is of the opinion that highway safety today is so diverse a problem, so fragmented and involves so many different organizations, public and private, that there is a critical need now for a central organization which would bring together all these agencies in co-operative effort.

In a telegram on June 22, 1966, to the Prime Minister of Canada, the annual meeting of the Canadian Automobile Association asked that the federal government take leadership in bringing about this co-operative approach as follows:

“In the full knowledge that highway transportation is primarily a provincial jurisdiction, it is submitted that the Government of Canada should extend its activities in its preparation of a set of guide-lines of highway safety by the convening of a conference of the federal and provincial jurisdiction, it is submitted that the Government of Canada establishment of a body that would provide the basis for the activities of governments in this highly important area.

“It is suggested that the Government of Canada might be expected to invite not only provincial representatives but representatives of national and major provincial agencies with an interest and concern in highway safety.

“The urgency of this matter is great and Canada must take action to meet one of its major social, economic and humanitarian problems.”

The Canadian Automobile Association now submits, for the consideration of the Justice and Legal Affairs Committee, a proposal to create a "Consultative Council on Highway Safety," with the following objectives:

- (a) To encourage comprehensive programs of highway safety by all worthy agencies, public and private, operating in this field;
- (b) To assist and fortify by all means possible, including technical and financial assistance, provincial and municipal safety programs;
- (c) To bring about the greatest possible collaboration and mutual assistance of all highway safety agencies;
- (d) To serve as a clearing house for all information on safety research and education;
- (e) To make available to all agencies the results of highway safety research in Canada and from countries abroad.

The "Consultative Council on Highway Safety" should be completely independent of any government, association or industry but mutually sustained by all. It should be emphatically stressed by this submission that it is not envisaged that there would be any disruption in the activities of any organization presently actively engaged in some phase of highway safety. Rather, it is the intention that existing activities would be greatly encouraged and supported. It might be considered that where a safety group presently exists in one aspect of safety, such as the Traffic Injury Research Foundation with the medical aspects of highway safety; or the Canadian Good Roads Association with the construction and maintenance of roads, these bodies might be invited to provide the works program and guidance for their own special activity.

PREAMBLE

WHEREAS the loss of life and property on Canadian streets is a major national problem involving all agencies, public and private, and all individuals;

WHEREAS the problem of highway safety in Canada is so fragmented that there is a serious overlapping and lack of co-ordination among all agencies and individuals involved;

WHEREAS there is urgent need for vigorous leadership by the federal government in bringing into concerted action all the varied agencies and forces involved in highway safety;

RESOLVED that the Government of Canada convene a meeting, in the immediate future, to consider the creation of a central agency, to be named the Consultative Council on Highway Safety, around which all Canadian highway safety activities could revolve.

It is suggested that the federal government provide the secretariat for a preparatory committee to plan the meeting and that the federal government consider assigning this task to the Canadian Government Specifications Board. The following draft constitution is submitted that it might serve as a basis for the proposed Council.

ARTICLE 1

A Council to be named the "Consultative Council on Highway Safety" to be established by a meeting convened by the Government of Canada.

ARTICLE 2

The aims and objectives of the Council shall be:

- (a) To encourage comprehensive programs of highway safety of all worthy agencies, public and private, operating in this field;
- (b) To assist and fortify by all means possible, including technical and financial assistance, provincial, municipal and private safety programs;
- (c) To bring about the greatest possible collaboration and mutual assistance to all highway safety agencies;
- (d) To serve as a clearing house for all information on safety research and education;
- (e) To make available to all agencies the results of highway safety research in Canada and from countries abroad and, where necessary, encourage and underwrite highway safety research and education in Canada.

ARTICLE 3

The headquarters of the Council should be located in Ottawa.

ARTICLE 4

The Council shall be composed of representatives of governments, federal and provincial, existing national associations with an interest in some aspect of highway safety. The composition of the Council should be suggested by a Preparatory Committee brought together by the Government of Canada. This preparatory group also would establish terms for eligibility in Council membership. Representatives would normally serve for a three-year period but provision should be made to elect one-third of the total membership of the Council every year. One-third of the members of the Council shall constitute a quorum.

ARTICLE 5

The powers and duties of the Council shall be to:

- (a) Elect its chairman and two vice-chairmen;
- (b) Elect members to the Council;
- (c) Appoint an Executive Committee of (number to be determined) members;
- (d) Act upon all matters referred to it by the Executive Committee;
- (e) Determine its own rules of procedure and establish such subsidiary bodies as it may consider necessary or desirable;
- (f) Vote an annual budget;
- (g) Refer to the Executive Committee, to subsidiary bodies, or to any other body, any matter within its jurisdiction;
- (h) Delegate to the Executive Committee the powers and authority necessary or desirable for the discharge of the duties of the Council:
 - (i) amend the provisions of the Constitution;
 - (ii) deal with any matters within the jurisdiction of the Council not specifically assigned to the Executive Committee.

ARTICLE 6

The Executive Committee shall be responsible to the Consultative Council. It shall be composed of (number to be determined) members appointed by the Board. They shall serve without remuneration but shall have all expenses paid when on Committee work. (Number to be determined) of the Committee members shall represent provincial governments; (number to be determined) the federal government) (number to be determined) shall represent national associations with an interest in highway safety and one will be a member-at-large, appointed because of his or her interest and involvement in the subject of highway safety. The Council shall initially appoint (number to be determined) members for a three-year term, (number to be determined) for a two-year term and (number to be determined) for a one-year term. Each year thereafter, (number to be determined) members shall be appointed for a three-year term to replace the (number to be determined) retiring members. (Number to be determined) members shall constitute a quorum. The Committee shall elect annually a chairman and one or more vice-chairmen.

ARTICLE 7

The Executive Committee shall:

- (a) Submit an annual report to the Consultative Council, including the activities of all ancillary groups;
- (b) Carry out directions of the Council;
- (c) Appoint Advisory Committees and ancillary groups and define their duties;
- (d) Appoint a chief executive officer who shall be called the General Secretary and who shall implement the directions and instructions of the Committee;
- (e) Prepare and submit to the annual meeting of the Consultative Committee an annual budget, annual statements of accounts, etc.;
- (f) Direct the program of the organization through the Advisory Committees and Secretariat of the collection, study, collation, analysis and dissemination of information on highway traffic safety;
- (g) Make any arrangements deemed necessary or desirable to fulfill the aims and objectives of the Council.

ARTICLE 8

Advisory Committees shall be appointed to the Council on the advice of the Executive Committee and Secretary.

These Advisory Committees shall initially be on:

1. Education, Driver Training, Examination, Re-Examination and Licensing;
2. Medical Aspects of Highway Safety;
3. Road Construction and Maintenance;
4. Traffic Law Enforcement;
5. Traffic Engineering;
6. Automotive Vehicles;
7. Highway Traffic Legislation.

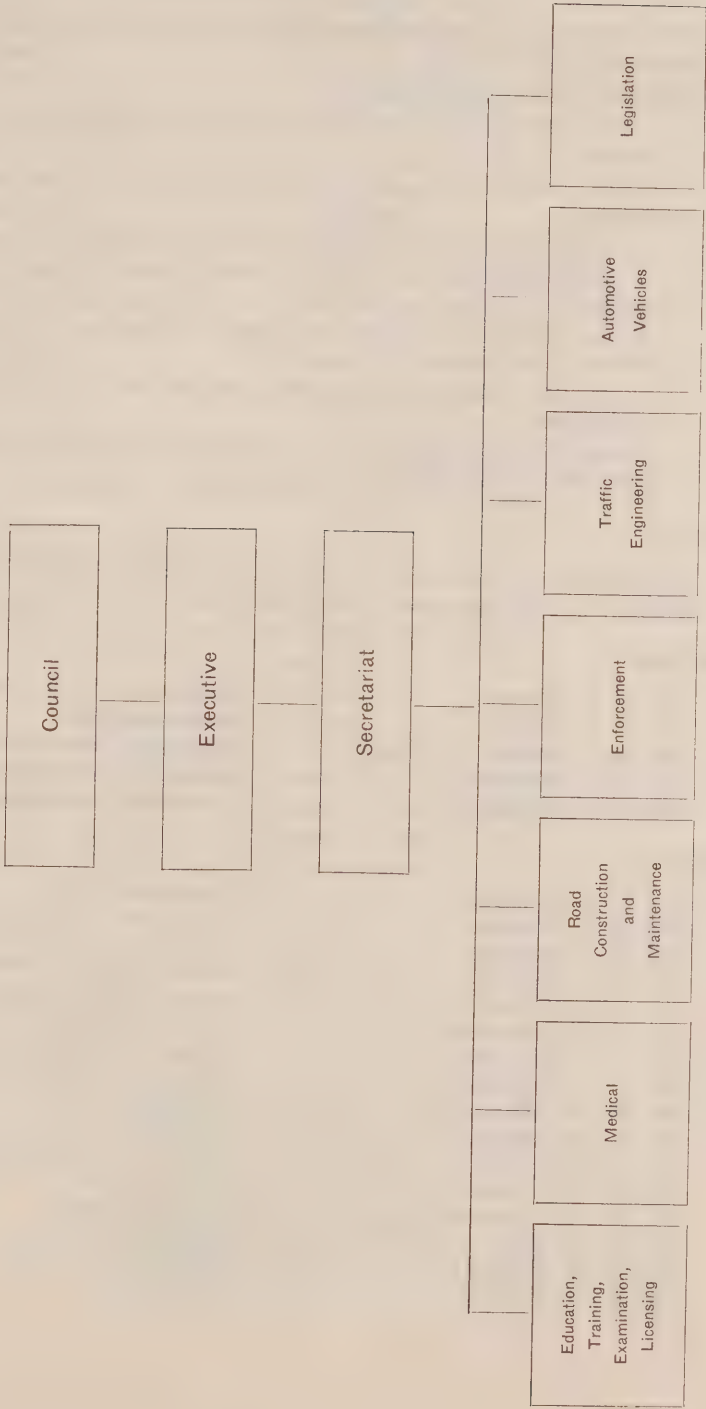
ARTICLE 9

The Advisory Committees will undertake all responsibilities referred to them by the Executive Committee. Members will be recruited from government and industry and shall be chosen on the basis of their knowledge of the special subject matter for which they are made responsible. The size of the Advisory Committees will be left to the discretion of the Executive Committee. The Committees will elect their own chairmen and vice-chairmen, if desired. A permanent secretary of the Committee will be assigned to the Advisory Committees by the Secretariat. He will be paid by the Council. Members will serve without remuneration but will receive travelling and living expenses from the Council. Meetings will be at the call of the chair at a convenient geographic location. Annual reports will be made by the Advisory Committees to the Executive Committee and upon matters referred to them by the Executive Committee.

ARTICLE 10

The General Secretary shall act as permanent non-voting secretary of the Consultative Council and non-voting secretary-treasurer of the Executive Committee. He shall advise the committees on technical, administrative and financial matters. He shall be responsible for the works program of the Executive Committee and shall direct the permanent Secretariat which will serve as the permanent secretaries of the Advisory Committees. He shall establish and maintain liaison with members and other organizations interested in highway safety research and education in Canada and abroad. He shall provide all services required for the efficient operation of all bodies within the structure of the Council. He shall be appointed by the Council for a two-year term.

SUGGESTED STRUCTURE
of the
CONSULTATIVE COUNCIL ON HIGHWAY SAFETY



OBJECTS OF THE CAA

The Canadian Automobile Association is the federation of all the non-profit automobile clubs in Canada.

The objectives of the CAA are:

To further the interests of the motorists generally throughout Canada.

To maintain the rights and privileges of those who use motor vehicles.

To promote rational legislation governing the use of such vehicles.

To assist in and encourage the maintenance of good roads throughout Canada.

To advocate a reasonable regard on the part of motorists for the rights of others using the highways.

To undertake and promote publications in the interests of the Association.

To do all such things as are incidental or otherwise germane to the attainment of the above objectives.

PATRON

His Excellency, General The Right Honourable Georges P. Vanier,
DSO, MC, CD, Governor General of Canada

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Mr. C. G. Carter	Past President
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Mr. H. T. Newell	Saint John, N. B.
Dr. J. Tanzman	Saint John, N. B.
Mr. K. Blakeney	Halifax, N. S.

LEGAL COUNSEL

Mr. R. R. Goodwin, Q.C.	Winnipeg, Man.
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POLICY & RESOLUTIONS

COMMITTEE CHAIRMAN

Mr. M. Millard, Q.C.	Calgary, Alta.
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CANADIAN AUTOMOBILE ASSOCIATION

ALLIED WITH:

American Automobile Association

INTERNATIONAL AFFILIATIONS:

OTA	World Touring and Automobile Organization Headquarters: London
AIT	Alliance Internationale de Tourisme Headquarters: Geneva
FIA	Fédération Internationale de l'Automobile Headquarters: Paris
FITAC	Federacion Interamericana de Touring y Automovil-Clubes Headquarters: Buenos Aires
CMC	Commonwealth Motoring Conference Secretariat: Ottawa

CAA MEMBER CLUBS

British Columbia Automobile Association
Alberta Motor Association
Saskatchewan Motor Club
Manitoba Motor League
Ontario Motor League—

- Eastern Ontario Club
- Elgin Norfolk Club
- Essex County Automobile Club
- Hamilton Automobile Club
- London Motor Club
- Niagara Peninsula Club
- Nickel Belt Club
- Ottawa Club

- Peterborough Club
- Toronto Club
- Waterloo County Automobile Club

Royal Automobile Club of Canada

Quebec Automobile Club

Maritime Automobile Association

CAA IS A MEMBER OF:

Canadian Good Roads Association

Canadian Tourist Association

Canadian Highway Safety Council

Traffic Injury Research Foundation of Canada

HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

THURSDAY, OCTOBER 20, 1966

Respecting the subject-matter of

Bill C-26, An Act to amend the Criminal Code (Safety Devices for
Automotive Vehicles)

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor
Vehicles) and

Private Members' Notices of Motions Numbers 26, 31 and 38

WITNESSES:

*From the Department of Defence Production, Canadian Government
Specifications Board:* Mr. D. Wolochow, Secretary; Mr. J. E. Hanna,
Committee Secretary; and Mr. J. A. Bancroft, Consultant with D.D.P.
on the Committee on Traffic Safety.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Bell (*Carleton*),
Mr. Choquette,
Mr. Chrétien,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Laflamme,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Trudeau,
Mr. Wahn,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, October 20, 1966.

(13)

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 9:30 o'clock a.m., the following members were present: Messrs. Cameron (*High Park*), Forest, Goyer, Guay, Mather.

There being no quorum, the Chairman adjourned the meeting until 11:00 a.m. the same day.

(14)

The Standing Committee on Justice and Legal Affairs met this day at 11:30 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Chrétien, Forest, Goyer, Guay, Latulippe, Mather, McQuaid, Ryan, Tolmie (11).

In attendance: From the Department of Defence Production, Canadian Government Specifications Board: Mr. D. Wolochow, Secretary; Mr. J. Bancroft, consultant with D.D.P. on Committee on Traffic Safety; and Mr. J. E. Hanna, Committee Secretary.

The Chairman introduced Mr. D. Wolochow, Mr. J. Bancroft and Mr. J. E. Hanna of the Canadian Government Specifications Board.

Mr. D. Wolochow then made a brief statement, after which the Committee proceeded to the questioning of the witnesses.

At the request of the Chairman, Mr. Wolochow passed around to the members a draft copy of a guide on factors of automobile safety.

On motion of Mr. Mather, seconded by Mr. Tolmie,

Resolved,—That the C.G.S.B. draft Standards re automobiles, 97-GP-1 through 97-GP-27, be appended to today's proceedings (*See Appendix 5*), and that the draft guide on factors of automobile safety be appended to today's proceedings (*See Appendix 6*).

At the conclusion of the questioning, the Chairman thanked the witnesses for their valuable contribution to the Committee proceedings.

On motion of Mr. Forest, seconded by Mr. McQuaid,

Resolved,—That the Committee pay an account in the amount of \$25.00 for copies of the British "Road Safety Bill" received from the British Information Services.

At 12:50 p.m., the Committee adjourned to Tuesday, October 25, 1966, or to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, October 20, 1966.

The CHAIRMAN: Gentlemen, we have a quorum and while we are in the solicitous state that we are I think we should commence.

I have the pleasure, gentlemen, of introducing to you Mr. D. Wolochow, Mr. J. E. Hanna and Mr. J. A. Bancroft. Mr. Wolochow is the Secretary and Mr. Hanna is the Committee Secretary of the Canadian Government Specifications Board. Mr. Bancroft is the Consultant with D.D.P. on Committee on Traffic Safety. As you will all recall, when the Minister was here last May he gave us an outline of what the Specifications Board has been doing. You all have a copy of this pink document in your possession.

Now, gentleman, if you will sit down we will proceed in the way you want. Perhaps you would give us a preliminary statement, and then the members could question you on it as well as on any other matter.

Mr. D. WOLOCHOW (*Secretary, Canadian Government Specifications Board*): Thank you, Mr. Chairman. I am glad you mentioned, sir, that the Minister had been here before this committee on May 27, at which time he gave you the background of the work that the Canadian Government Specifications Board was doing in the field of traffic safety. Since that time we have made some progress and we were able to supply the committee with copies of 27 draft standards covering safety devices that anyone who wishes may include in automotive vehicles. These draft standards are now before the Canadian Government Specifications Board for formal ratification and if we encounter no obstacles within the next few days with the board, which has the authority for final approval of any standards published by the Canadian Government Specifications Board, then we will issue these early next month.

I regret very much, Mr. Chairman, that we have not had time to prepare French translations of these standards. Officially, we must start the translations only after our board approves them which, of course, we hope will be very shortly.

The CHAIRMAN: Could you let us have copies then?

Mr. WOLOCHOW: We will let you have copies just as soon as we can get them.

Mr. GOYER: Did you say that the arrangements for translation can only be made after the approval of the board? Are the working papers not translated in the department?

Mr. WOLOCHOW: It is not our practice to translate from one language to the other while we are working on it.

Mr. GOYER: Even though you may have to appear as a witness before the Committee?

Mr. WOLOCHOW: We did not really have sufficient notice. We did not know that we were going to appear until just a few days ago.

Mr. GOYER: But is it the policy of the department, when an official of the department has to come as a witness, not to have his documents in both languages?

Mr. WOLOCHOW: If it is at all possible we try to have them, but time just did not permit.

Mr. GOYER: But if you have time, it is your policy?

Mr. WOLOCHOW: That is right. Now, in the interim we have also been working on a guide to traffic safety, copies of which we have not been able to submit because the guide has not yet been approved by our committee; we hope it will be very shortly, and as soon as the draft has been approved by our committee we will be very happy to provide the Committee with copies.

The CHAIRMAN: We can count on that, then?

Mr. WOLOCHOW: Yes sir, you may be sure that we will have them just as soon as possible. As soon as the committee has given final approval to the draft guide we will have copies for you. If it may be of interest, sir, this guide will comprise three parts: one part dealing with the human factor; the second dealing with the mechanical factor, and the third part dealing with the environmental factor, which is mostly the road. It will be merely a guide—a collection of the best information we have on the relationship of these three factors to the traffic safety problem, in the hope that this compilation of information made available to the Canadian public will help in some small way to improve the traffic situation on our highways.

The CHAIRMAN: Mr. Hanna, do you want to add anything?

Mr. J. E. HANNA (*Committee Secretary, Canadian Government Specifications Board*): No, I do not think it is necessary for me to supplement this at the moment, sir.

The CHAIRMAN: Mr. Bancroft?

Mr. BANCROFT (*Consultant with D.D.P. on Committee on Traffic Safety*): No sir.

The CHAIRMAN: Gentlemen, the meeting is open for questions, and I see Mr. Mather has his hand up, and then Mr. Tolmie.

Mr. MATHER: In line with what we have heard, and also in line with what I recall the Minister saying before, I think I am right in saying that the standards which this specifications board are setting are simply educational or informative. There is no way for their mandatory adoption on any section of the community.

Mr. WOLOCHOW: I should perhaps emphasize, Mr. Chairman, that there are actually two parts to our work. One part consists of the standards per se, the 27 standards describing the devices. They are made available to Canadians who may want to use them in purchasing these items for their vehicles. So far as the government is concerned, I think the Minister did indicate in his testimony last May that the government has already committed itself to the policy of equipping its own vehicles with these items just as quickly as feasible. Otherwise, they are available for anyone who wants to use them. Now, the guide is not a standard; it is merely information. They are two separate things; those which

we will publish next month and the guides which we hope to publish before the end of the year.

Mr. MATHER: Then although there is no mandatory basis for the adoption or establishment of these standard devices, the federal government may set an example to the country by adopting what has been established as safety devices in its own vehicles?

Mr. WOLOCHOW: We hope that the government will set an example.

Mr. MATHER: I am one of those who regrets very much that it is impossible, apparently constitutionally so far, that what you are doing is not going to be put into some legislation, but rather used for educational purposes.

Mr. WOLOCHOW: So far as Canada is concerned, I do not think there is any legal or constitutional reason they cannot be published by the proper authorities.

Mr. HONEY: You just want them published?

Mr. WOLOCHOW: Perhaps I should have said, "made mandatory".

Mr. RYAN: Do you see any reason why there could not be a federal code for federal vehicles, let us say. Could that not be?

Mr. WOLOCHOW: For federal?

Mr. RYAN: Yes.

Mr. WOLOCHOW: Well, the government has already committed itself to implement these standards for its own vehicles.

Mr. RYAN: Would there be no legislation?

Mr. WOLOCHOW: Well, that I do not know.

Mr. RYAN: It is just a matter of practice, is it?

Mr. WOLOCHOW: I suppose that is up to the legislature.

Mr. RYAN: Well, you would know whether it is under consideration, would you not?

Mr. WOLOCHOW: Well, the whole matter is under consideration.

Mr. MATHER: I think you said, sir, that you saw no reason for the devices standards not being made mandatory by the proper authority. What would that proper authority be?

Mr. WOLOCHOW: That is something that the government is trying to establish in consultation with the provinces.

The CHAIRMAN: It would appear to be a committee of the ten provinces.

Mr. TOLMIE: I have two questions, Mr. Chairman, and I want to follow along with the line of questioning just advanced. I think all of us are aware that there is a potential constitutional problem which would prevent the federal government, perhaps, from enacting a national safety code incorporating these specifications. You do not have to answer the question, because I know you do not set government policy, but what are your views in this matter. Do you think it would be most beneficial to have the federal government enact a national safety code similar to the American one, which would make it mandatory to have these safety devices incorporated in a vehicle? What is your considered opinion?

Mr. WOLOCHOW: First of all, Mr. Chairman, we should realize the situation in this country is not exactly the same as it is in the United States with respect

to the relation between the federal government and the individual states. Apart from that, certainly some standards would be very useful. The question of who should make the law is now under consideration, and I think that anything that can be done to promote safety certainly would be useful.

Mr. TOLMIE: I do not want to tie you down on this, but what I am trying to get across is that everybody seems to think we have to do a lot about safety; but I am of the opinion—and I think, as well, perhaps certain other members of the Committee—that in order to make these effective they have to be mandatory. Guidelines are good; they are examples, but they are not that effective. I gathered from your evidence that at the present time of course there are difficulties, but that you would feel that to be most effective they should be mandatory and incorporated into law, whether it is done by the federal government or the provincial government, or in cooperation with both.

Mr. WOLOCHOW: Shall we put it this way, sir, that the federal government has seen fit to make these mandatory upon itself, so I suppose that is an indication of what the federal government thinks about this.

Mr. TOLMIE: I should not pursue this line of questioning because I realize it is government policy. There is one other question I would like to ask. This list of specifications is very comprehensive; there are 27 standards, I believe. Now, I know the public are accepting this trend to more and more safety devices. The thought has occurred to me—and I have not really had time to develop it to any great extent—that as we increase the number of safety devices in cars, there is a danger that drivers of cars will feel so protected, so secure, that their standard of care may diminish?

Mr. WOLOCHOW: I think, sir, that is something that could be debated. I really do not know the answer. We can't prophesy what the public reaction will be, hoping that this will not happen, and hoping that these devices will add to the safety.

Mr. TOLMIE: We are all hoping that, but I am just wondering if any research has gone into the particular aspect—it is psychological, I know—of whether there is not a real great danger that the objectives to be obtained by incorporating standards may be offset by an increasing lack of care on the part of the driver because of this feeling of security. I am just wondering if any research has gone on in that aspect?

Mr. WOLOCHOW: Could we take an example of the seat belts. When seat belts were first suggested, I think that question was raised. Some people thought if the seat belts were really as good as the proponents say it is and will make driving so much safer, people will become more reckless. They will drive faster and take more chances. I think that experience has shown that this is not the case. What statistics we do have, indicate that the seat belts have been very useful in diminishing a number of fatalities in certain types of accidents and the seriousness of the injury.

Mr. TOLMIE: And you would hope the same reasoning would apply.

Mr. WOLOCHOW: Yes.

Mr. TOLMIE: I have one other short question. What is the safety feature of the standard gear quadrant; what is the purpose of that.

Mr. HANNA: I think the answer to this is that more and more people are driving cars other than their own, rental cars and so on. There have been

accidents caused by people getting into a car and assuming that the quadrant was as they had been used to, putting it in reverse when they expected to go forward or what have you. So, having a standard sequence for these is important. Also in that standard, we have removed the reverse and forward motions by a detent and the neutral positions, so you cannot accidentally get into going the wrong direction.

I would like to comment on the previous question if I might, Mr. Chairman, on the psychological effects of the safety devices. I think with some people they may have the effect that you mentioned. I think with other people, they will have the other effect, that they will be a reminder of the fact they are in a dangerous situation and they will, therefore, be more careful. I think this particularly applies to seat belts. This is a very obvious reminder that you are in a hazardous situation, and I think, just as many people will be affected one way as the other on this thing.

Mr. TOLMIE: I understand also that certain manufacturers of tires have shown some concern about the safety of the tire itself. Do you have any comments on that?

Mr. HANNA: I am not quite sure, but I think most of the tire manufacturers have been concerned with the public concern on tire safety and I think that we have something in our standards on this relating the capacity of the tire to the capacity of the vehicle, which is very important. Also in the non-quantitative part of the guide we have commented on this and have given some information which may be of use to the owner of the car on inflation, capacities and so on.

Mr. TOLMIE: Thank you.

The CHAIRMAN: Mr. Guay, you are next.

(Translation)

Mr. GUAY: Has this draft guide been already given to the provinces? To the ten provinces?

(English)

Mr. WOLOCHOW: Mr. Chairman, the standards and our guides have been produced by a committee on which all the provinces are represented. We have had two meetings of the full committee; we have had two meetings of the subcommittees, and at all of these the provinces have been represented. They have this information; we are working very closely with the provinces, and even after these documents have been published we hope to continue working with the provinces until this whole problem between the federal and provincial governments can be solved.

(Translation)

Mr. GUAY: Mr. Secretary, you say that you are working in close cooperation with the provinces, but what happened last week in Toronto during Road Safety Conference? The Federal Government was not even represented there, I think. Would it not that have been proper for the Federal Government to be invited to this?

(English)

Mr. WOLOCHOW: That is a very proper question but perhaps it should be addressed to the provinces. As I say, I still confirm that we are working very closely with the provinces; we have very friendly relations with them; they have been most co-operative and they are certainly interested, and although we have certain differences of opinion once in awhile, to date we have been able to work very harmoniously with them.

As to the meeting in Toronto, I believe that question was raised in the House of Commons and an answer was given. I may only supplement it by saying that I think it is perfectly normal for certain organizations to have their own meetings. We have certain meetings among ourselves, and I think if the provinces decided that at this particular juncture they would prefer to have their own meetings and there certainly is not very much we could do about it. We knew about the meeting, and perhaps we had some subconscious feeling that we should be there, but the fact remains that the provinces decided to have a closed meeting, and while they gave a statement to the press we were not invited. But we are meeting with them all the time and are continuing our consultations, and we certainly have no quarrel on the ground that they decided at this particular juncture to have an exchange of views amongst themselves. I think just like in any family, members of the family might have small differences of opinion and they do not want to discuss those before an outside party.

(Translation)

Mr. GUAY: But during the discussions that you mentioned, you said that you had your own meetings. But were all the provinces represented at these meetings? Has there been any question of making these standards mandatory? How can we have uniform standards all over the country if there is, not just mere co-operation, but actual application of these recommendations? I think they are putting the cart before the horse.

(English)

Mr. WOLOCHOW: Let me put it this way. At the outset, over a year ago, when it was decided to undertake this project, we wrote to the 10 provinces; they all accepted our invitation to come and at a meeting in June the 10 provinces were represented. At the second meeting we had earlier this month, unfortunately, one of the provinces could not be represented. At the committee meetings, it was agreed by the whole committee that the subcommittee meetings would only include those people who were within commuting distance from Ottawa, for example Quebec and Ontario—Manitoba—would come to the subcommittee meetings.

All the members and the provinces are sent copies of the minutes and we are now continuing our discussions with them (provinces) on particular subjects. So far as my reference to our own meetings are concerned, we do have working meetings of our secretariat, where we have discussions as to how to proceed on certain matters, and I do not think anyone would suggest that we always make these formal meetings. To get work done on a specific subject, you have to really prune it down to a working group. But decisions on what goes in here and in our guide, of course, are made at the meetings.

So far as making the standards mandatory is concerned, certainly this has been discussed at the meetings, but I do not think our committee could make such a decision. We are hoping that before too long the provincial governments—after these have been issued and made available—will perhaps decide on what their approach to mandatory legislation should be. In the meantime, the federal government is studying its own position, as to whether there is a jurisdiction there because, as you know, in the B.N.A. Act the federal government does have jurisdiction in certain interprovincial and international matters. If it can be resolved on that basis, that might be a very happy solution to it. This certainly is definitely under consideration. Either a request will come from the provincial side or a recommendation will come from our committee. It will be resolved in that way.

● (11.50 a.m.)

(Translation)

Mr. GUAY: One last question, Mr. Secretary. Is it possible to instal on older vehicles these 27 standard devices, whether they be in the transmission, headlights, steering? Is it possible to include those—

(English)

Mr. WOLOCHOW: I am going to give a partial answer to that and then ask either Mr. Hanna or Mr. Bancroft to supplement it.

I think if you look through your list of items it is obvious that some of them can be readily installed, others would involve quite a more serious operation, and economics would dictate whether you are going to instal a dual brake system or whether you are going to take your car in and get a new one that has this as standard equipment. I do not know whether you wish to add anything to this, Mr. Hanna.

Mr. HANNA: I think that is a very good answer and I think that the example which Mr. Wolochow has taken is a good one.

A dual brake system could be put on an existing car but it would be rather an expensive proposition. Quite a few of the items, such as outside mirrors, and so on, could be put on easily; padded dash, fairly easily; energy absorbing steering column, with great difficulty.

(Translation)

Mr. GUAY: Does this mean then, that if the standards became obligatory, they would apply only on new cars?

(English)

Mr. WOLOCHOW: It means, Mr. Chairman, that this is largely a question of economics and the fact that this is a very large industry we are dealing with. They have mass production and they must be given time to put some of these things into the vehicle. I think if these standards ever become mandatory we would have to adopt the principle that is being followed in the United States, under which the motor industry is given lead time for some of these items. In other words, if it is something that can only be put into new cars, then you have to give them a chance to change over their production line so they can put them on. In the United States they have definitely established schedules for certain times. This year a certain item will become mandatory, next year another, and

so on. But as the industry gains experience with these things the likelihood is that the lead time may be reduced. I do not know. In any event, we have to face this very serious economic problem.

The CHAIRMAN: Mr. Ryan, Mr. Forest and then Mr. Goyer.

Mr. RYAN: Mr. Chairman, I would like to ask a question, first with respect to standard 97-GP-23 and later to 97-GP-24. Twenty-three deals with side marker devices and I was wondering why the forward side marker should be coloured from white to amber and the rear ones red only. Why is there an option on the forward side marker?

Mr. BANCROFT: Mr. Chairman, the reason the white to amber was included is because of European imports.

Mr. RYAN: Is there any time limit envisaged to change this standard and reduce it to either white or amber? Which would we prefer here, white or amber?

Mr. BANCROFT: It is our policy as in all our standards to revise them and keep them up to date with technological progress and developments in the industry. As soon as it becomes appropriate and advisable to make changes in these standards, they will be amended. Of course, we have all the scope in the world to change these as long as they are voluntary. If they ever become law then, of course, the due process of law will have to be considered.

Mr. RYAN: This is one area where there likely would be a change come to pass very shortly.

Mr. WOLOCHOW: There is nothing here that is final. As there are changes and our thinking indicates we will make improvements, we will make them if we can.

Mr. RYAN: Yes, certainly.

Mr. HANNA: I think this is an area also in which ophthalmologists are in some conflict as to the virtue of amber as a colour for use in designating parts of a car. Some feel that this is useful and others feel that it may be confusing. At the moment we are faced with both being in existence and with no clear evidence as to which way we should go. I think that the decision we have in here is appropriate.

Mr. RYAN: You say both are in existence. I do not recall seeing any existing car in Canada with—

Mr. HANNA: You are correct. I think the new Renault has this. Very frequently this is done by extending the signal light around the corner and, as you know, most of the American cars have amber front signal lights now.

Mr. RYAN: Yes.

Mr. HANNA: If these are extended around the corner it forms a side marker device as well.

Mr. RYAN: Is there going to be any confusion with truck lighting with these side markers? Trucks have more side lights than passenger cars. There just does not seem to be very many for passenger cars at the present time.

Mr. HANNA: I think the purpose of this is to make cars look more like trucks, in the night situation, so that they can be seen from the side. Trucks normally have enough lights on them so they can be seen from the side, but cars may not. I suppose in this way we are increasing confusion in an unimportant way to get more definition in a very important way.

Mr. RYAN: Did you want to say something, on that, Mr. Bancroft?

Mr. BANCROFT: Mr. Chairman, the amber aspect of this, as Mr. Hanna has stated, is in the hands of the ophthalmologists and this rather dictates as to what we place in any of our standards from the experts' point of view. Perhaps we should investigate the experts before we make a decision. I happen to drive a European car that has amber markers on the sides. There is sufficient evidence on accidents to indicate the problems which are encountered because of the lateral position of an automobile in relation to traffic. We would like to have the headlights white, we feel this has greater penetration, and the amber would then be recognized as the side marker. I have to go to the United States here, this is in line with the Interstate Commerce Commission, where the front marker light plan started.

Mr. RYAN: I think this is an excellent standard, there is no question about that particularly in our country where we have cars spinning on ice, and this sort of thing, and I am all in favour of it.

I would like to go on to the next standard, 97-GP-24, which appears to specify roll bars for light trucks only, trucks up to 10,000 pounds. I wonder why no standard was brought in for passenger vehicles other than convertibles?

Mr. BANCROFT: Mr. Chairman, this standard applies to light trucks of utility type up to 10,000 pounds with open bodies and enclosures made of canvas, aluminum or fibreglass. We are dealing here with government purchase of this type of automobile and we have not gone into the passenger car field. The reason for this is that we have ample evidence from various studies that the sedan-type passenger car will withstand reasonable roll-over and has fairly good roll-over characteristics, if I may put it this way, so long as it is within a normal roll-over situation. What I mean by normal roll-over situation is that it drives off the road and rolls over. However should this vehicle encounter an obstacle in its performance of rolling, then there is some doubt whether the present automobile would withstand such an intrusion into the passenger compartment. But normally, from statistics we have the majority of roll-overs, the standard type sedan roof will support the car in a roll-over sufficiently that intrusion on the passenger compartment will not be fatal.

Mr. RYAN: Your standard, as it is specified here, would it be better than the average passenger car? In other words, if a light truck hit a tree would the bar be better in a roll-over, or would it just give the equivalent of the present strength of the roof of a passenger car?

Mr. HANNA: I think, Mr. Chairman, that this would give less protection. This would merely keep the driver's head from coming in contact with the road, but he does not have any protection against being thrown out or things coming in on him.

Mr. RYAN: This applies to the cab as well as to the rear of the vehicle?

Mr. HANNA: This is essentially for a cabless vehicle.

Mr. RYAN: A cabless vehicle?

Mr. HANNA: Where you just put up some sort of a canvas windbreak, or what have you.

Mr. RYAN: I understand.

The CHAIRMAN: Mr. Forest?

Mr. FOREST: When the minister appeared here last May I believe he asked the Government Specifications Board to prepare a complete security code for motor vehicles for the use of government, industry and the public. Is this part of it or are you preparing it now?

Mr. WOLOCHOW: Well, as I pointed out to you earlier, Mr. Chairman, actually our work will have two end results. There will be these standards, which will be issued separately. Then we have the guide, which we hope will be published before the end of the year, which will be for information only.

Mr. FOREST: That is what we said would be recorded in three parts.

Mr. WOLOCHOW: Three parts, yes.

Mr. FOREST: The human factor, security devices, roads, everything.

Mr. WOLOCHOW: Yes.

Mr. FOREST: This is what you have prepared now?

Mr. WOLOCHOW: Just to give you an example, this is a draft of part 3. It is entirely informative. It is a collection of the best information that we—

An hon. MEMBER: Could you pass them around?

Mr. WOLOCHOW: No, we just brought samples because, as I say, these are now before the committee on final vote and we hope that in a matter of several weeks these will be available for this committee.

Mr. FOREST: Will it be several weeks?

Mr. WOLOCHOW: Well, I would say within a month.

Mr. FOREST: In preparing this code, under headings like "causes of accidents", are you collecting statistics from provincial authorities, municipal authorities, police departments, and so on? How do you go about it?

Mr. WOLOCHOW: Yes, they are all working with us. We are not calling it a code any longer, we are calling it a guide. The word "code" was used at first. We were not too happy with the word because it connoted legal matters; for instance, criminal code, and this kind of thing. We chose the word "code" because there is another code which is entirely voluntary, and that is the national building code. It is a collection of the best available information on how to put up safe buildings but it does not become operative until the municipality adopts it. Once a municipality adopts it, it becomes a building by-law of the municipality. The federal government issued the code and it is a collection of the best information on how buildings should be constructed. This is parallel to that, but the committee at its last meeting decided that the word "code" might, perhaps, be misleading, some people may think the federal government is legislating in this field. So, we agreed to use the word "guide", for better or for worse.

Mr. FOREST: Are you going into the causes of accidents?

Mr. WOLOCHOW: We are going into the causes of accidents as related to the driver, the human factor. We discuss the causes of accidents as related to the mechanical factor, which is the car, and we discuss the causes and prevention of accidents as related to the road. Now, it has been suggested that the guide have more parts, which we will have to consider. For instance, a part that will discuss the relationship between the legal aspects of the situation and traffic safety. In other words, what is the relationship between a certain law or regulation and the degree to which that law or regulation prevents accidents? It has been suggested that we have a fifth part, one that will discuss the relationship of education in more detail than is discussed in the first part, where the human factor is discussed, and in that fifth part there will be a more comprehensive consideration of the relationship of education in the prevention of accidents. Now, whether we will add those additional parts or not I cannot say at the present time because the committee is just considering the whole idea.

Mr. FOREST: Are you getting sufficient statistics across the board from all sources?

Mr. WOLOCHOW: We have all the statistics that are available at our disposal. There are certain problems in connection with statistics but we hope we can overcome those in the course of our study.

The CHAIRMAN: Mr. Goyer?

Mr. GOYER: Mr. Chairman, we would have to be engineers and lawyers to discuss the standards, but I have one line of questioning.

(Translation)

Is there any major difference or are there any major differences between standards as suggested, that is both Canadian standards which have been proposed and American standards which are now compulsory or which will become compulsory within a period of time?

(English)

Mr. WOLOCHOW: We have been working very closely, Mr. Chairman, with the United States authorities in this field and we are trying to keep as closely in line with them as possible. I think you understand why that is important. It is because the motor vehicle industry on this continent is more and more becoming an integrated one, and perhaps even in the western hemisphere. So, we are in very close touch with them and are collaborating with them. As an example of that, the gentleman who heads up the federal government group working on the standards was at our recent meeting, and we have been at some of their meetings. So we are keeping very closely in touch, but there are certain minor differences which, I think, can be accepted.

(Translation)

Mr. GOYER: Now, without wanting in any way to minimize the work you have been carrying out in this area, I would like to say, however, that because some things do exist, whether or not it is any doing of yours—I have reference here to the fact that there is no real automobile industry in this country. There may be an automobile industry as such but there are no Canadian makes of cars,

if you prefer. Is it not a little bit useless for us to be discussing these questions here in public. Would it not be better for us to discuss this in relation to the United States? Should not these matters, in other words, be discussed between American and Canadian Government officials? Should these people not meet, should there not be, if necessary, meetings between American parliamentarians and Canadian parliamentarians? We should not I think perhaps, be trying to devise original legislation which cannot be applied.

(English)

Mr. WOLOCHOW: Well, Mr. Chairman, to repeat what I said, we are working very closely with our counterparts in the United States and I think our standards are very compatible with theirs. They are still working on their standards, they are still revising them. Do not forget that so far in the United States these standards apply only to the purchase of government vehicles. I know, as you do, that just recently President Johnson signed two bills which have very wide ramifications, but the provisions of those bills have not yet been implemented. They are still working on the implementation. We do not know at this point in time what changes those standards which the federal government is following in the purchase of its own cars may go through before they become part of the provisions of the new legislation. This whole situation is in a state of flux all the way from what is happening in the industry to what we do in the field of standards. I do not think we know exactly what the end result in industry of the present changes now in progress will be. In any event, we are working very closely with the technical people. Whether the parliamentarians should meet is something that should be decided on that level. I do know that President Johnston has been urged to call an international meeting on traffic safety. I also know that in Europe there has been some action taken to establish a committee to deal with the problem. It is not at all impossible that Canada will participate on this European committee. So, these things are moving.

(Translation)

Mr. GOYER: No doubt. But I do feel that in Canada we are not very well placed to legislate in this area because we have no purely Canadian automotive industry. We could, of course, pass legislation, we could make recommendations but these could not be applied. Such recommendations that we could pass would be merely pious recommendations, so to speak. I wonder if we are not wasting our time in trying to act in an exclusive Canadian manner. And do you not think that we should really be trying to participate in these international discussions? Indeed we might take the initiative in this, because we are in a position of inferiority in this respect. I see where you have relationships established with the United States. We also get cars from Europe. Do you have the same type of relations, that is at the official level from government to government? Do you have the same type of relationships with the European governments and with which?

(English)

Mr. WOLOCHOW: Mr. Chairman, we have no official relations, as yet, with any European government. The European car manufacturers, those who have shown an interest in our work, were invited to come to our meetings, and they have copies of these draft standards. They have had opportunity to comment on them. That is how it stands right now.

With regard to the other problems of Canada's position in the motor industry, I do not think we can make any further comment. I think, because of the state of flux in which the whole situation is at the present time, we really do not know what the end result is going to be. I do not think that we should take the position that Canada does not count in this industry. I think Canada does count, and will have its influence in this matter.

(Translation)

Mr. GOYER: I understand very well that Canada is an important country in the area of car safety. However I fail to see how Canada can be important in a legislative way. In fact, Canada should be important I think in the area of research. We should also attempt to have international contacts, to have standards which we might like to suggest. These should be accepted by industries and other important governments. From the legislative point of view I fail to see what else we can do, except copy what has been done elsewhere. I am not asking you to comment on that because this is a matter of policy. I am sorry, I have concluded.

(English)

Mr. WOLOCHOW: I could make one comment, Mr. Chairman. In the international field, I have mentioned that there is some activity in Europe. We have been informed of their activity, and Canada very likely will be invited to participate in those meetings. We have already sent a message to Europe that, whenever they are ready, we will be glad to supply them with copies of our standards and guides; so that we have already established those lines of communication.

(Translation)

Mr. GOYER: One remark following your evidence. I note that whereas the Canadian Government could attempt to have close relationships with both European and American Governments as well as with those automobile makers who are outside Canada, what we are really attempting to do now is to set up guidelines to provide to the various provincial governments, and to apply such guidelines as come under our jurisdiction. We seem to be attempting to apply a great policy of road safety whereas to me this appears simply normal. There is nothing extraordinary about that. What would be better, what would be more unique is for this government to decide to have very well organized relationship with other countries, this would be on a regional basis and could contribute to road safety on a large scale.

(English)

Mr. McQUAID: Mr. Chairman, I would just like to inquire from the chief witness if any inspection has been made by the Specifications Board of the value of studded tires as a safety device in the winter time? I realize, of course, that it would be very difficult to set this down as a standard. I am just wondering if any tests have been made by your Specifications Board with respect to studded tires?

Mr. WOLOCHOW: Tests are being conducted in a number of places on the value of the tires, on the effect they have on the pavement and how they operate under various conditions, but certainly we are not prepared to make

any judgment at the present time. They seem to be very useful under certain circumstances; there are arguments for and against them; but as I say, I do think it is too early for us to make any real, considered judgment on them.

We discuss them in our guide; in part 2 of the guide we do discuss studded tires. We point out that there are advantages and disadvantages. What the balance will be between those two will, I think, depend on where and how they are used. Under certain circumstances there is no doubt that they are very useful. There are other situations where perhaps they should not be used. This is all pointed out in our discussion in part 2.

Mr. McQUAID: Are your investigations still being continued and will they possibly be continued to the point where you will be able to reach a conclusion?

Mr. WOLOCHOW: I am hoping that eventually that will be possible.

Mr. MATHER: I understand from what was said a little earlier about tires that there is in the guide some reference to safety standards, or safety specifications, for tires.

It seems to me. That one of the safety problems involved in tires, is the confusing way in which the industry labels or grades the tires. I find that some are said to be first line, second line, premium, or super; there does not seem to be any real standard of how a consumer, who is concerned with safety of what he is riding on, can judge.

The CHAIRMAN: It seems to be mileage.

Mr. MATHER: Mileage, yes; but also I think there is a safety factor involved in the quality policy not being too clearly indicated by the type of labelling that the industry uses. If we could come to a simple clear way of labelling or grading tires, whether it is one, two, three, or five star—whatever the standard was—would the witnesses agree that this would, in effect, be a move towards safety, through informing the public clearly on the quality and security of tires?

Mr. WOLOCHOW: First of all, Mr. Chairman, we have a standard on tires, 97-GP-14. We discuss tires in the guide.

I think the tire industry is alive to the situation right now in view of all the discussions.

Mr. Hanna is really more of an expert on tires than I am and he might add something to that.

Mr. J. E. HANNA (*Committee Secretary, C.G.S.B.*): I would agree with you, Mr. Mather, that it is desirable that the public be informed, and that the present designations used by manufacturers to signify quality are confusing. From the information I have, however, this is more an economic thing than anything else; that if you have the right size of tire for your vehicle, for the load you are going to carry in that vehicle, and you maintain it, you are safe. The low grade or cheap tire will give you that safety for a much shorter time than the higher grade or more expensive tire.

I think the main difference between tires at the moment is the length of time for which they will give safety, provided you have the right size of tire for the vehicle. I think there has been quite a bit of this, where vehicles have been fitted with tires which are suitable for a relatively lightly loaded vehicle—one or two passengers—and then they put the whole family in and load up a roof rack and the trunk and take off, and the tires are grossly over-worked. This, I think, is something where guidance is needed in getting the right size of tire, and I

think we are all providing a little guidance. I also think the industry is providing more guidance than they used to in getting the right size and capacity of tire.

Another reason, I think, that tires cause a great deal of trouble is improper maintenance. People do not check them often enough as regards inflation pressure; they do not increase their inflation pressure when they are in a heavily loaded situation, and they probably tend to run them too long.

Mr. AIKEN: I have a supplementary question on that. I have heard that tires which are nearly bald assume almost the action of a hydroplane in that, rather than gripping the road, it has been found that they actually ride above it on wet pavement.

Mr. HANNA: This is quite so. You need a tread pattern to allow the water to escape and not build up a wedge of water underneath the tire, separating the tire from the road surface.

Mr. AIKEN: In that connection, is the type of tread of significance, or are most of the treads on tires sufficient for normal purposes?

Mr. HANNA: The tread pattern is important. You could devise a tread pattern which would be poor, but I think most of the existing tread patterns are adequate in this regard provided that there is enough tread pattern left.

Mr. J. A. BANCROFT (*Consultant with D.D.P. on Committee on Traffic Safety*): To extend Mr. Hanna's answer to your question, we are recommending that automobiles have a plate indicating tire capacities for highway and load travel.

Mr. HANNA: This information now is usually buried in the driver's handbook some place where you cannot find it and do not see it and do not remember it. We think that a decal, or plate, some place in the glove compartment, or what have you, would be much more useful.

Mr. BANCROFT: Some one asked a question on studded tires. We are merely recommending, or stating, in our preamble that they substantially increase traction on icy and slippery surfaces and will reduce braking distance.

They have to be carefully selected. The installation pattern of the studs is important for the proper life and effectiveness of the studs. From what information we have available across the country the effect of studs on pavement appears to be negligible on the rolling wheel. Any damage that might occur, we feel, is offset by the safety value. We think that if we are going to use these studded tires, they should be confined to just that period of the winter months.

The CHAIRMAN: I have Mr. Tolmie, Mr. Goyer and Mr. Latulippe who want to ask some questions. Mr. Latulippe has not had an opportunity as yet, so if Mr. Tolmie and Mr. Goyer will agree I will ask Mr. Latulippe to ask his question first. Is that agreeable?

(Translation)

Mr. LATULIPPE: Mr. Chairman, I will be brief. What I would like to know is if, in the realm of safety devices for installation in cars you would have something like this to suggest to automobile manufacturers. There is something which is not quite right in cars with automatic transmission or power steering. You will have the engine stalling on a hill and the steering will stiffen to such an extent that the vehicle can no longer be controlled. There should be some safety device in this connection. I have seen accidents like this happen to new

cars. With this power steering, when the engine stalls the car can no longer be controlled. I am not familiar with your standards, but have you laid down anything in this connection?

(English)

Mr. HANNA: In our standard, Mr. Chairman, for the standard gear quadrant we require that the park position of the automatic transmission shall engage a brake lock, in effect; so that a transmission which complies with the requirements here could be locked if it stalled on a hill.

(Translation)

Mr. LATULIPPE: When the motor stalls the car, it becomes all but impossible to control. It stiffens up to a point where you can hardly control the car anymore. It seems to me that companies should have provided for this for some type of safety device in this respect.

(English)

Mr. BANCROFT: I believe, Mr. Chairman, we are speaking of power steering and power brakes; is that not so?

What we are recommending is that there be a reserve tank in the power train to assist the operator, during such occasions as you are referring to, to enable, the operator in bringing his automobile to a controlled stop.

Mr. HANNA: We are also suggesting in the guide part of this thing that the car be controllable by a relatively weak person for a short time, if the power assist on the brakes or if the steering fails. It should be controllable for a short time by a small woman, for instance.

Mr. GOYER: It is included in the guide lines?

Mr. HANNA: Yes.

Mr. WOLOCHOW: The situation in the steering is something similar to certain types of windows which were installed in certain buildings. There was a complaint from one development that they could not operate the window. Upon investigation it was found that the window was properly installed, but unfortunately the architect decided to use a rather large window, and this was a little old lady about 85 years old, four foot eight in height, and could not reach the controls. Now, you have this situation developing even in other fields.

The CHAIRMAN: Mr. Tolmie and then Mr. Goyer. Are you through, Mr. Latulippe?

Mr. LATULIPPE: Yes.

Mr. TOLMIE: Mr. Chairman, we have had some evidence about the fact that federal technical people and provincial technical people and their American counterparts have met. I understand from your evidence that these suggestions have been heard, and we now have these specifications before us.

I feel that perhaps the most important group to be represented at the meetings would be the automobile industry themselves. I think we all realize that this will be of tremendous importance to them from a financial standpoint. I was wondering (a) if there were representatives from the automobile industry present at these meetings; (b) if there were, do they have any objections to the validity of some of these devices, and, if so, which devices?

Mr. WOLOCHOW: Mr. Chairman, I am glad this question was asked because it indicates that I was a bit remiss in giving you information.

Certainly the motor vehicle manufacturers are represented on our committee. The industry has an engineering committee consisting of the chief engineers and the chairman of that committee is an official member of our committee; his vice-chairman is his alternate on our committee, and all the members of the industry committee were invited and attended these meetings.

In addition to that I think I mentioned that representatives from the European manufacturers, who are not, as yet, on the engineering committee because, perhaps, they are not quite ready with respect to their manufacturing operations on this continent, but certainly some of the important European manufacturers were also present. They have given us very splendid co-operation. They have raised objections where they thought they had some objections but I can say, Mr. Chairman, that these standards have met with the approval of the representatives of the motor vehicle manufacturers. They also approved the guide. As a matter of fact I think the motor vehicle manufacturers have taken a greater interest and have co-operated with us even beyond our expectations which, of course, has been very gratifying to us. We can understand their interest in this field because it vitally affects the welfare of the industry especially when you consider what some of the things in the future might be.

Mr. TOLMIE: Thank you very much.

(Translation)

Mr. GOYER: Mr. Chairman, I note there that research has been carried out at the federal level with regard to car safety. How much money do we put into this research?

(English)

Mr. WOLOCHOW: Mr. Chairman, I think we must appreciate that the federal government has just recently entered this field. I think that everyone accepts that control of the traffic situation was entirely a provincial matter but, in due course, questions were raised in the House of Commons, and parliamentarians were asking questions. The government also wanted to do something to protect the drivers of its own vehicles. As you know, and you know as well as I do, it gradually became involved in it. I think you will agree with me that it is a very complex situation but the government is studying this matter very, very carefully.

At the meeting of our committee last June there was a recommendation by the committee, which represented, I believe, a good cross section of all those people interested in this situation, that the government give consideration to the establishment of a national accident prevention research centre. That recommendation was conveyed to the responsible minister of the government and that minister has asked the National Research Council to research this matter, give it careful study, and to submit its recommendations to him. I cannot make any comments about how much money the government will spend. I must emphasize that the government is very much concerned and I would not be surprised if, in due course, it will take a very active role in this matter of research. We have the National Research Council which I think everyone will agree is a very

competent research body, and it is now making the preliminary studies of what is required and how much it might cost.

(Translation)

Mr. GOYER: As far as policy is concerned, I do not want to put any questions to you in this regard. However, I believe that there is a federal responsibility here as far as research is concerned in this area. I believe that all that can be done by us is to have the results of our research accepted by other countries. This, then, is a matter for international relationships. However, to return to the purely technical or administrative point of view, could you tell us exactly how long the federal government has been looking into this?

(English)

Mr. WOLOCHOW: Well, I think this started a little over a year ago. I think maybe the brief that one of your colleagues had prepared and submitted to the government might be accepted as official initiation of this, although the government certainly was concerned about the safety of its own employees in driving vehicles. I think, perhaps, the federal government was the first official body which decided to install safety belts.

(Translation)

Mr. GOYER: Do you already have original standards which have been discovered or developed by you, by the federal officials here, by the officers of the department? Do you have such original standards which you could already suggest to other countries?

(English)

Mr. WOLOCHOW: Well, I think, Mr. Chairman, the standards are reflected in these 27 draft standards pretty well.

(Translation)

Mr. GOYER: I am sorry, I am not an engineer. I have not been looking at this very closely. I was simply asking this. I know that there is a great deal here which has been drawn from American or other countries' experience. Is there anything particularly Canadian here which you could have suggested had you thought that it would be possible to apply it, that you would not have put in here, in other words, because you felt it could not be applied by the Americans?

(English)

Mr. HANNA: Well, Mr. Chairman, there is one of the 27 here in which, I think, we had a very major part, and that is the rear window defrosters. We consider that this was a problem that was of more concern here than in the United States and we had a draft on this before they did. The document which we have here has some American influence in it but theirs has more Canadian influence than ours has American influence. The rest of them are largely American in origin but at least we have made a major contribution to one of them.

(Translation)

Mr. GOYER: I understand that this work has only been going on for a year, but have you started establishing some kind of priorities with regard to the products made by such and such a company? What I mean is this.

For instance, as far as tires are concerned, could you tell us whether one type of tire, one brand, is superior to another? Have you started drawing up any priorities of this kind?

(English)

Mr. HANNA: You had better answer the last one and Mr. Bancroft had better supplement my answer to the previous one.

(Translation)

Mr. GOYER: If I spoke of tires, it was simply as an example. You can answer in a very general way. I have absolutely nothing against the tire industry in particular.

(English)

Mr. WOLOCHOW: Well, let me say this, Mr. Chairman. For about 15 years we have had a government standard for tires, and this standard has been used by government departments when purchasing tires of all kinds. Now, of course, we must admit the government buys a limited variety of vehicles, it does not buy Cadillacs. We have these technical standards in the government. In some cases I think we can, in all modesty, say that our standards were perhaps ahead of some of the standards in the other countries. In using these standards the government has equipment which it uses for evaluating tires. There is a proving ground in Ottawa for testing tires but that information, of course, has been made available only to government departments. I do not think we could possibly make any statement on whether one make of tire is better than another. I do not know if anyone knows, except in those cases where there has been a reason for the government testing agencies to evaluate certain tires that have been offered for a specific purpose, according to our standards.

(Translation)

Mr. GOYER: Of course I realize that it is not up to you to reveal standards, but it is a good thing to find out that these do exist. Of course, we would not want to favour some type of people over others.

(English)

The CHAIRMAN: Thank you, Mr. Goyer.

Mr. BANCROFT: I would like to supplement Mr. Hanna's answer to your question regarding some originalities from Canada. Standard number 26, which is the outside ornamentations and accessories, is a Canadian development which will not be found in any of the United States standards. Number 27, the rear luggage compartment barrier, is a Canadian development which will be not found in any of the American standards.

To go back to number 26, the ornamentation and accessories, certain material was obtained from the French government and much of this was reviewed from the code de la route for France. The French had made considerable studies of the protrusions on the exterior of automobiles. To the question, "Could such things apply to our models, on this side, today?" The answer is "yes, the removal of outside ornamentations could be done with very little cost and inconvenience".

To revert to another question, about working in line with the Americans. Mr. Wolochow mentioned that we are working closely with the Americans. In

attending some of their working committee meetings it seemed to me they said they would like to work closely in line with us. This is really a continental effort.

The CHAIRMAN: If we have completed questioning the witnesses, I would like to express our thanks to Mr. Wolochow, Mr. Hanna, and Mr. Bancroft for your presentation and, in particular, for the very clear, concise and illuminating way in which you answered the questions. I think members of the Committee have derived a great deal of benefit from this. We wish to thank you most sincerely.

Mr. Wolochow, it is our practice to append presentations to our proceedings. Have you any objection to making your guide an appendix to today's proceedings. I know it is in draft form and there may be some changes in it before it is formalized, but if it was appended to the minutes of this meeting, it would be available for further study.

Mr. WOLOCHOW: It would be a privilege, sir.

The CHAIRMAN: I think that is agreeable, I would entertain a motion that the draft standards of the Canadian Government Standards Board be appended to today's proceedings; also, that the draft guide be also included as an appendix.

Mr. MATHER: I so move.

Mr. TOLMIE: I second the motion.

Motion agreed to.

The CHAIRMAN: Next Tuesday, we are going to have Mr. Robert Malkin as our witness. The Clerk of the Committee has obtained from the Imperial government their bill on the question of road safety. It deals, in large part, I take it, with people who drive with an undue proportion of alcohol in the blood. I understand there is a cost of \$25 for procurement of this. May I have a motion that this account be paid?

Mr. FOREST: I so move.

Mr. MCQUAID: I second the motion.

Motion agreed to.

The CHAIRMAN: These will be distributed to all members through the mail. You will then have an opportunity to read them.

Mr. Ray, is there anything else that should come before the Committee? If not, we will adjourn and I believe we will be meeting at 11 o'clock on Tuesday. I did tell you we would be meeting today at 11 o'clock but the Clerk of the Committee got it changed to 9.30 a.m. for same reason. We will try to maintain the hour of 11 o'clock for all our meetings.

APPENDIX '5'

DRAFT COPY ONLY OF
Canadian Government Specifications Board
Standards 97-GP-1
through 97-GP-27

(for index to Standards see Appendix 6, end of Part II)

TABLE OF CONTENTS

- 97-GP-1 Restraining Devices and Anchorages
- 97-GP-2 Energy-Absorption Components in the Forward Compartment
- 97-GP-3 Recessed Panel Mounted Instruments and Control Devices
- 97-GP-4 Energy Absorbing Steering Control System
- 97-GP-5 Safety Door Latches and Hinges
- 97-GP-6 Anchorage for Seats
- 97-GP-7 Four Way Flasher
- 97-GP-8 Safety Glazing Materials
- 97-GP-9 Dual Operation of Brake System
- 97-GP-10 Height and Extension of Bumpers
- 97-GP-11 Standard Gear Quandrant (P R N D L)
- 97-GP-12 Windshield Wipers and Washers
- 97-GP-13 Glare Reduction Surfaces
- 97-GP-14 Tires and Rims
- 97-GP-15 Back-up Lights
- 97-GP-16 Rear View Mirror(s)
- 97-GP-17 Rear Window Vision Aid
- 97-GP-18 Window and Door Controls
- 97-GP-19 Ash Trays and Lighters
- 97-GP-20 Arm Rests
- 97-GP-21 Padding for Seat Backs
- 97-GP-22 Head Rest
- 97-GP-23 Side Marker Devices
- 97-GP-24 Roll Bars
- 97-GP-25 Fuel Tanks
- 97-GP-26 Outside Ornamentation Accessories and Protrusions
- 97-GP-27 Rear Luggage Compartment Barrier

97-GP-1

1 November 1966

STANDARD

for

RESTRAINING DEVICES AND ANCHORAGES
for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for three types of restraining devices and their anchorages.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:

2.1.1 Society of Automotive Engineers (SAE):

J4 —Motor Vehicle Seat Belt Assemblies.

J787—Motor Vehicle Seat Belt Anchorage.

J826—Manikins for Use in Defining Vehicle Seating Accommodation.

- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:

Passenger cars

Station wagons

Light trucks up to 10,000 lb. GVW.

Buses and school buses, where so designated

Standard commercial trucks, where so designated

Other vehicles, when mode of operation so demands for the safety of the occupants.

4. *Detail Requirements*

4.1 *Restraining Devices*

- 4.1.1 Restraining device may be a lap belt, or a seat belt assembly, as follows:

4.1.1.1 *Type 1*—A lap belt for pelvic restraint.

4.1.1.2 *Type 2*—A seat belt assembly combination for pelvic and upper-torso restraint.

4.1.1.3 *Type 2a*—A seat belt assembly consisting of a shoulder belt for upper-torso restraint and a lap belt (*Type 1*).

4.1.2 All restraining devices shall comply with SAE J4.

4.1.3 Where feasible, restraining devices shall be supplied with the vehicle as OEM (Original equipment manufacture) items.

4.1.4 Where feasible and so designated, seat belts or seat belt assemblies shall be provided for each occupant for which the vehicle is designed.

4.2 Anchorages

4.2.1 A seat belt anchorage consists of an attachment point in a suitable part of the vehicle structure which may include the seat.

4.2.2 Anchorages shall comply with SAE J787.

4.2.3 Anchorages shall be provided for each authorized occupant seating position in accordance with SAE J787.

4.2.4 *Location of Anchorages for Type 1 Seat Belt and for Lap-Portion of Type 2 and Type 2a Seat Belt Assemblies—*

4.2.4.1 The anchorage for *Type 1* seat belt assemblies and the lap-portion of *Types 2 and 2a* seat belt assemblies shall be placed so that a line from the anchorage to the passenger's "hip" (defined as the "H" point in SAE J826) will make an angle from the horizontal as near as practicable to 45 degrees, as shown in Figures 1, 2 and 3 of SAE J787. The location of the hip-point shall be determined by following the procedures in SAE J826.

4.2.4.2 Anchorages for belts that will be installed over the seat-bottom-frame rear bar shall be rearward of a vertical line through the point where the belt will enter the seat, as shown in Figure 4 of SAE 787. All anchorages shall be spaced laterally so that the lap portion of the belt forms essentially a U-shaped loop when in use. Buses using *Type 1* seat belts shall utilize the seat for anchorage points. Floor and wall anchorage points are permitted in buses only if entrance and egress are not obstructed.

4.2.5 *Location of Anchorages for the Upper-Torso Portion of a Type 2 Seat Belt Assembly and for a Type 2a Shoulder Belt*

4.2.5.1 As a minimum, these anchorages shall be provided for each outboard seating position in passenger cars and station wagons, and each front seat outboard position in light trucks. In buses, only the driver's seat need be provided with these anchorages. At least one anchorage shall be provided for the upper end of each upper-torso restraint. These anchorages may be located in the seat, side or rear structure, roof, or floor, provided that the structure over which the restraint passes, or to which it is fastened, has been designed or reinforced to withstand the resulting load, and the attached belt will comply with angle requirements. When in use, these anchorages shall not obstruct entrance to or egress from any seat to the rear.

4.2.5.2 The lower end of the upper-torso restraint may be fastened to the lap belt of a *Type 2* assembly or to an existing inboard anchorage for a *Type 1* belt. With the seat at its rearmost limit of travel, and the seat back in its rearmost driving position, the anchorages for the upper end of the upper-torso restraint shall be on, or rearward of, the extension of the SAE J826 two-dimensional manikin's torso line.

4.2.5.3 An upward angle of the upper torso restraint passing from the shoulder reference point to an anchorage is desirable. If there is a

downward angle of the upper torso restraint passing from the shoulder reference point to an anchorage, or to a suitable structure between the shoulder point and an anchorage, this angle shall be not more than 40 degrees downward from the horizontal.

4.2.6 *Strength of Anchorages*

4.2.6.1 *Anchorages for Types 1, 2 and 2a Restraining Devices*

Anchorages shall meet the strength requirements specified below, when tested in accordance with 4.3. Permanent deformation of any anchorage or surrounding area is acceptable provided there is no rupture nor breakage and the anchorage does not pull loose. Anchorages shall withstand the following minimum forces:

Anchorage and Belt Type

	<i>Force, lb.</i>
Separate anchorages for Type 1 belts	2,500
Each outboard anchorage for pelvic portion of Type 2 assembly	2,500
Each outboard anchorage for upper portion of Type 2 assembly or Type 2a belt	1,500
Common anchorage for inboard end of Type 1 belt in combination with Type 2a belt	3,000
Inboard anchorage for one end of center-positioned Type 1 belt and either inboard end of Type 1 belt in combination with Type 2a belt, or inboard end of Type 2 assembly	5,500
Common anchorage for inboard ends of two lap belts, and inboard ends of two upper-torso restraints	6,000

4.2.6.2 *Anchorages for a seat belt assembly attached to the seat frame*—The seat structure, seat adjusters if applicable, and attachments shall withstand the forces specified in 4.2.6.1 as applicable, plus the seat inertia force. The seat inertia force shall be not less than 20 times the seat weight. Floor and seat deformation are acceptable provided there is no structural failure or release of the seat adjuster mechanism.

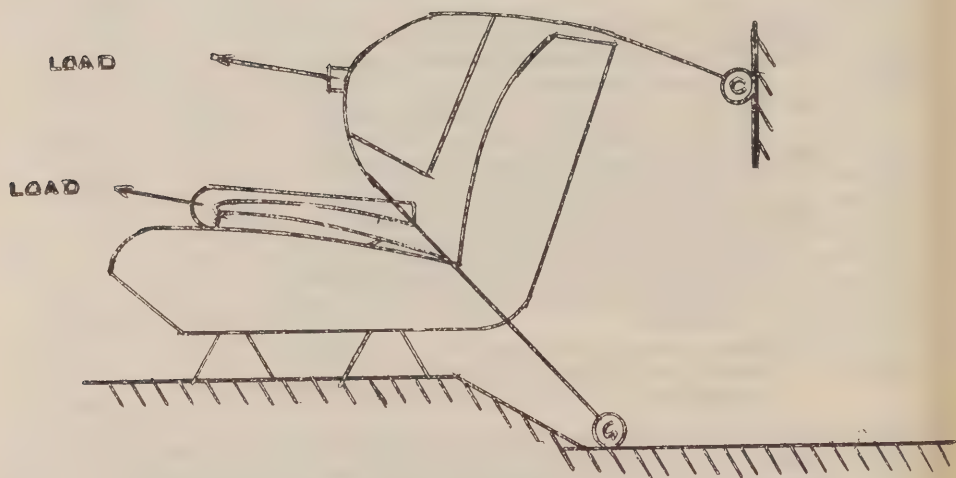
4.3 *Test for Strength of Anchorages*

4.3.1 *General*

Seats shall be in place in the body of the vehicle structure but structures giving the equivalent effect of closed doors may be substituted for doors. The load shall be applied at an upward angle of 10 ± 5 degrees from the horizontal. As a minimum, the vehicle structure shall be subjected to simultaneous pull on all anchorages for all designed seating positions of each seat assembly. The load shall be applied toward the rear for seats facing the rear. When common anchorages are used for forward- and rearward-facing seats, the loads shall not be applied simultaneously. Anchorages for the

upper end of upper-torso restraints may be tested independently if they are located in structural members in which no pelvic restraint anchorages are located. All seats in the lateral position shall be tested simultaneously.

- 4.3.2 *Test for Type 1 Seat Belt Anchorages*—The loads specified in 4.2.6.1 and 4.2.6.2 shall be applied using either a body block similar to that shown in Figure 5 of SAE J787 or a suitable equivalent method. The strength test shall be conducted either with the seat installed or an applicable vehicle floor pan.



- 4.3.3 *Test for Types 2 and 2a Seat Belt Anchorages*—The loads specified in 4.2.6.1 shall be applied using either a body block as shown above, or a suitable equivalent method. The strength test shall be conducted with the seat in place in the vehicle.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary Canadian Government Specifications Board, Department Defence Production, Ottawa 4 Canada.

97-GP-2,

1 November 1966.

STANDARD

for

ENERGY-ABSORPTION COMPONENTS IN
THE FORWARD COMPARTMENT
OF AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for forward compartment energy absorption components for automotive vehicles.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this Standard:
- 2.1.1 Canadian Government Specifications Board (CGSB)
97-GP-1, Restraining Devices and Anchorages for Automotive Vehicles
97-GP-3, Recessed Panel Mounted Instruments and Control Devices for Automotive Vehicles
- 2.1.2 Society of Automotive Engineers (SAE)
J826, Manikins for Use in Defining Vehicle Seating Accommodation
J921, Recommended Practice for Instrument Panel Laboratory Impact Test Procedure.
- 2.1.3 United States Public Health Service Publication No. 1000, Series 11, Number 8 — Weight, Height, and Selected Body Dimensions of Adults.
- 2.2 Reference to the above publications is to the latest issue unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
- Passenger cars
Station wagons
Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 *Forward Compartment*—The forward compartment, which includes the areas of the instrument panel, sun visors, header, corner A-pillars, and under the instrument panel, shall be designed and constructed to afford a reasonable degree of protection for the front-seat occupants wearing 97-GP-1 lap-type seat belts.
- 4.2 *Injury Potential*—Injury potential shall be minimized by constructing or locating forward-compartment structures to eliminate impact

- and to reduce forces imposed upon front-seat occupants wearing 97-GP-1 Type 1 seat belts, under collision conditions.
- 4.3 The instrument panel, including the padding assembly, shall not contain any sharp or protruding rigid edges in the head impact area (par. 4.13).
 - 4.4 The panel below the windshield shall be covered, at least in the impact area (par. 4.13) determined by the manikin, with energy-absorbing cushioning material applied over a crushable or collapsible metal backing that will deform and expand the areas of contact, to cushion and spread the impact of a passenger's head.
 - 4.5 The structure of the instrument panel, with padding in the impact area (par. 4.13), shall be designed to reduce the likelihood of injury to the passenger's head upon impact.
 - 4.6 When passenger cars and station wagons are tested in accordance with SAE J921, the deceleration of the head form when impacting the panel at 22 feet per second shall not exceed a value of 80 g's excluding all portions of the deceleration time curve above the 80 g level of less than 1.0 millisecond duration. The applicable "less than 1.0 milliseconds" time of duration shall be that measured at the 80 g level on the deceleration time curve.
 - 4.7 Within the impact area (par. 4.13) the instrument panel, constructed of or covered with force-distributing cushioning material, shall expand the areas of contact and deform to conform to the performance requirements in 4.6.
 - 4.8 The lower portion of the instrument panel shall contain no sharp nor protruding edges in the knee and leg impact areas. Within the impact areas, the panel, constructed of force-distributing cushioning material, shall expand the areas of contact and deform to distribute the forces and minimize injury when struck by the knees or legs. Control devices and instruments in these impact areas shall comply with the requirements of 97-GP-3.
 - 4.9 The sun visors shall be constructed of energy-absorbing cushioning material to attenuate injuries caused by impact of the head against the windshield. The sun visor mounting shall be designed and located to provide a reasonable degree of head protection.
 - 4.10 The roof header impact area shall contain no sharp nor protruding edges. The impact area shall be covered with energy-absorbing cushioning material to reduce the likelihood of injury to the occupant's head upon impact.
 - 4.11 The right and left front corner posts shall not contain any sharp or protruding edges. The corner posts in the impact areas (par. 4.13) shall be covered with energy-absorbing cushioning material at least 0.5 inch thick to reduce the likelihood of injury to the occupant's head upon impact. Padding shall be designed and placed to minimize loss of visibility.
 - 4.12 The glove-compartment door shall be constructed and mounted to minimize the likelihood of injury to occupants upon impact.

4.13 Impact Area

- 4.13.1 The head impact shall be established through the use of 97-GP-1 Type 1 seat-belt-restrained manikins, or other test devices, having "H" point (SAE J826) to top-of-head dimensions of 33 and 29 inches. Adjustable seats shall be in the extreme forward-driving or riding position for the 33-inch device and in the extreme rearward position for the 29-inch device. The impact area shall be that included between the arcs formed by the top-of-head point when each device is swung forward and also 45 degrees to each side of the longitudinal axis through each normal seating position. The knee and leg impact areas shall be established by the use of 97-GP-1 Type 1 seat-belt-restrained manikins, or equivalent, of approximately 95 percentile male dimension, with the front seat in mid-position. The 95th percentile male is defined in U.S. Public Health Service Publication No. 1000, Series 11, Number 8.
- 4.13.2 The impact areas in all portions of the instrument panel and doors that may be contacted, shall be determined by swinging the manikin's knees and legs 45 degrees right and left at each designed seating position, with the manikin's "H" point moved horizontally forward 10 inches and its feet resting in their normal toeboard position.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-3

1 November 1966.

STANDARD

for

RECESSED PANEL-MOUNTED INSTRUMENTS AND CONTROL DEVICES
for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for automotive vehicle instruments and control devices to afford, in the event of a collision, a reasonable degree of protection for front-seat occupants wearing lap belts

2. *Applicable Publication*

- 2.1 The following publications are applicable to this standard:
 - 2.1.1 Canadian Government Specifications Board (CGSB) 97-GP-1, Restraining Devices and Anchorages for Automotive Vehicles.
 - 2.1.2 Society of Automotive Engineers (SAE) J826, Manikins for Use in Defining Vehicle Seating Accommodation.
- 2.2 Reference to the above publication is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
 - Passenger cars
 - Station wagons
 - Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 *Injury Potential*—Injury potential shall be minimized by constructing, locating and mounting control devices and instrument bezels to reasonably minimize contact by the heads of occupants wearing 97-GP-1 Type 1 seat belts.
- 4.2 *Location*—All instrument-panel-mounted control devices (except devices not essential to controlling a moving vehicle) shall be located within reach of the driver while he is wearing a 97-GP-1 Type 2 or 2a seat belt assembly. The essential controls are the steering wheel, transmission selector lever, turn signals lever, ignition switch, choke control, headlight switch, and windshield wiper and washer controls. Essential controls shall be readily identifiable.
- 4.3 *Contact Areas*
 - 4.3.1 Control devices shall have a contact area of not less than 1 square inch of flat surface, with an edge radius of not less than 0.125 inch.

When a force not exceeding 90 pounds is applied from any position defined in 4.4, the devices shall deflect to within 0.375 inch of the panel surface, shall be pushed flush with the panel surface, or shall be detached.

- 4.3.2 Control devices and instruments positioned outside the established impact area, or that cannot be struck due to steering wheel, column, or shielding, are not required to meet the requirements of 4.3.1.
- 4.3.3 Instruments and instrument bezels within the impact area, and not prevented from contact as previously specified, shall have an edge radius of not less than 0.125 inch and shall project not more than 0.250 inch above the surface of the panel.
- 4.3.4 The lever knobs of selector levers and signal levers, when mounted within the impact area as defined in 4.5, shall have a relatively flat area of at least 1.0 square inch. Complete penetration of the knobs by the shafts shall not occur under an impact of 2,500 pounds
- 4.4 *Impact Area*—The impact area shall be established through the use of 97-GP-1 Type 1 seat belt-restrained manikins, or other test devices, having "H" point (SAE J826) to top-of-head dimensions of 33 and 29 inches. Adjustable seats shall be in the extreme forward position for the 33-inch device and in the extreme rearward position for the 29-inch device. The impact area shall be that included between the arcs formed by the top-of-head point when each device is swung forward and also 45 degrees to each side of the longitudinal axis through each normal seating position.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-4

1 November 1966.

STANDARD

for

ENERGY-ABSORBING STEERING-CONTROL SYSTEM
for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for energy-absorbing steering-control systems in automotive vehicles to minimize the likelihood of crushing or penetrating injuries to occupants as a result of frontal impact.

2. *Applicable Publications*

- 2.1 The following publication is applicable to this standard:

- 2.1.1 Society of Automotive Engineers (SAE) J850, Recommended Practice for Barrier Collision Tests.
- 2.2 Reference to the above publication is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
Passenger cars
Station wagons

4. *Detail Requirements*

- 4.1 The steering-control system is defined as the basic steering mechanism in combination with its associated horn-actuating mechanism, trim hardware, etc., and includes any portion of the steering column assembly that may contain an energy absorber for the purpose of dissipating energy upon impact.
- 4.2 The steering-control assembly shall be so constructed that when it is impacted at a relative velocity of 22 feet per second with a torso-shaped body block (Figure 1), weighing 75-80 pounds and having a spring rate load of 600-800 pounds per inch, it will absorb the energy of the body block. The force developed during collapse of the system shall not exceed 2,500 pounds. The spring rate is determined by loading the chest of the torso-shaped body block with a 4-inch wide, flat contact surface so that it is 90 degrees to the longitudinal axis of the body block, parallel to the backing plate, and 15 to 20 inches from the top of the head form. The load is measured when the flat contact surface has compressed the body block material $\frac{1}{2}$ inch, and the spring rate is determined by doubling this load figure.

- 4.2.1 When the steering wheel is the principal energy-absorbing element, the load-cell recording device shall be equivalent to the type shown in Figure 2, and shall be mounted either directly behind the wheel or in the frontal surface of the body block, with its axis of primary sensitivity in the direction of body-block travel at the time of impact. The steering wheel shall be mounted to the load cell by means of an appropriate nose piece at the same angle as it is to be installed in the vehicle.
- 4.2.2 When a component or components other than the steering wheel, such as the steering column, is the principal energy-absorbing element or contributes substantially to the absorption of energy, the load cell shall be located between the steering wheel and the remainder of the energy-absorbing system, preferably immediately under the wheel or in the forward impacting surface of the body block.
- 4.2.3 Other testing methods, such as high-capacity acceleration facilities and anthropometric dummies, giving equivalent results, may be used in lieu of the methods defined in 4.2.1 and 4.2.3.
- 4.3 The steering-control assembly shall be so designed that when the front structure of the automotive vehicle collapses during the SAE J850 barrier collision test at 30 miles per hour, the upper end of the steering control system shall not be displaced rearward, relative to an undisturbed point to the rear of the steering wheel position, more than 5 inches. The rearward displacement of the steering-control assembly shall be determined under dynamic conditions during the barrier collision or equivalent test.
- 4.4 The steering-control system shall be so constructed that there shall be no devices nor attachments such as horn-actuating mechanism, trim hardware, etc., that can catch in the operator's clothing during normal driving manoeuvres.

5. Notes

- 5.1 The publication listed in Section 2 available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

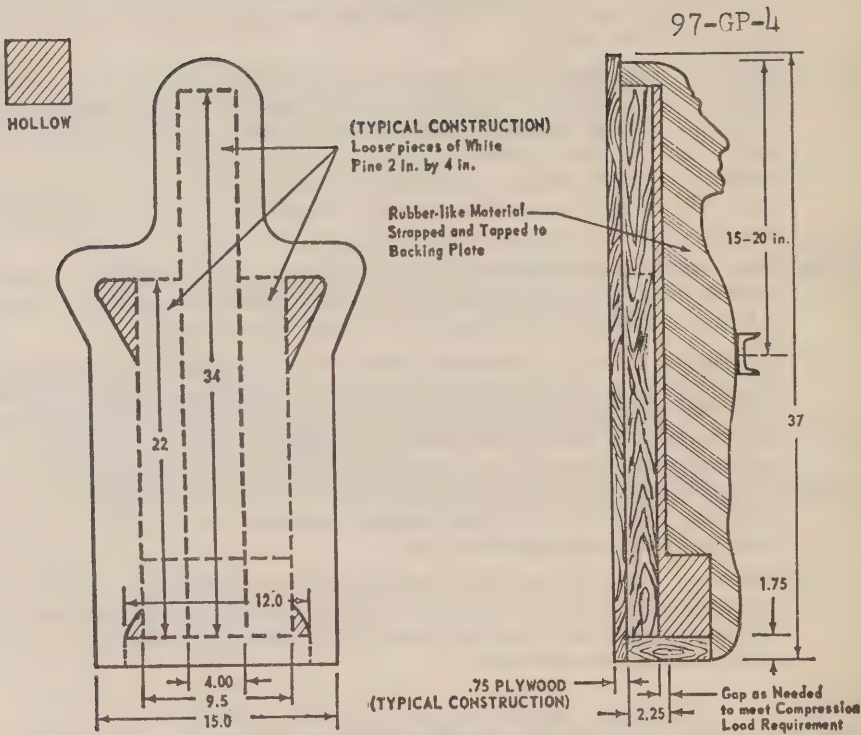


FIGURE 1.—50th percentile torso shaped body block.

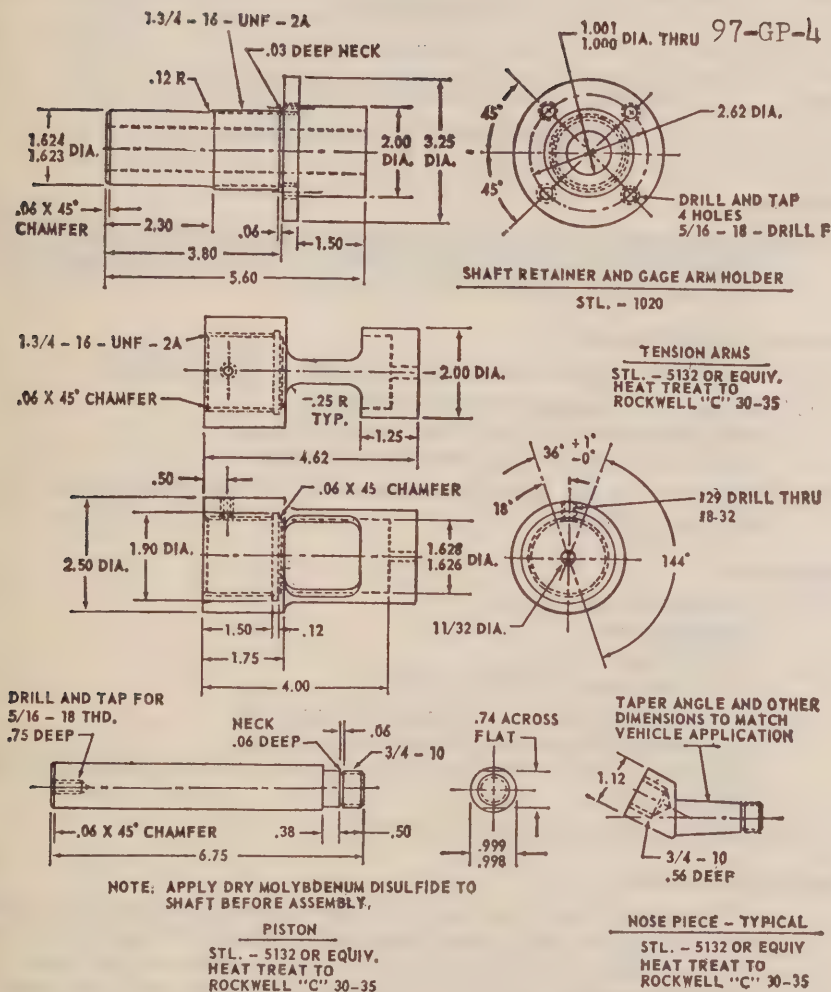


FIGURE 2.—Load cell.

97-GP-5

1 November 1966.

STANDARD

for

SAFETY DOOR-LATCHES AND HINGES

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes minimum static load requirements for side-door latch mechanisms and hinges to minimize the possibility of occupants being ejected from the vehicle.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:
 - 2.1.1 *Society of Automotive Engineers (SAE)*
J839, Passenger Car Side-Door Latch Systems
J934, Vehicle Passenger Door Hinge Systems
- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
Passenger cars
Station wagons
Light trucks up to 10,000 lb. GVW.
- 3.2 *Exceptions*—This Standard does *not* apply to:
Light trucks with folding or cargo-type doors
Open-body trucks with enclosures made of canvas, aluminum, glass fiber and steel.

Secondary latch loads (4.2, 4.3) do not apply to sliding doors.

4. *Detail Requirements*

- 4.1 All applicable vehicles shall be equipped with safety door-latches and hinges. The hinges shall have ample strength to support the door and to withstand a longitudinal load and a transverse load equal to or greater than the loads specified in 4.2 and 4.3 for the door-latch and striker assembly. All door-release mechanisms shall be provided with a single positive locking device not subject to accidental release. Interior or exterior handles need not be locked by this device if not operable by accidental side, rearward or forward force.
- 4.2 *Longitudinal Load*—Automotive vehicle door-latch and striker assemblies, when tested as prescribed in 4.4, shall withstand a mini-

mum longitudinal load of 2,500 pounds when in the fully latched position, and 1,000 pounds when in secondary latch position.

4.3 *Transverse Load*—Automotive vehicle door-latch and striker assemblies, when tested as prescribed in 4.4, shall withstand a minimum transverse load of 2,000 pounds when in the fully latched position and 1,000 pounds when in the secondary latch position. For vehicles equipped with sliding doors, each track and slide combination shall withstand the transverse loads specified for latches and hinges when the door is in the fully latched position. Force shall be applied to the upper and lower edges of the door as close to the track as possible.

4.4 *Test Procedures*—Test procedures and equipment shall be in accordance with Sections 4 and 5 of SAE J839 and Section 4 of SAE J934.

5. Notes

5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-6

1 November 1966.

STANDARD

for

ANCHORAGE OF SEATS

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements and test procedures for the capacity of anchorages and construction of automotive vehicle seat assemblies.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:
 - 2.1.1 *Society of Automotive Engineers (SAE)*
J787, Standard for Motor Vehicle Seat Belt Anchorages
J826, Manikins for Use in Defining Vehicle Seating Accommodations.
J879, Passenger-Car Front Seats and Seat Adjusters.
- 2.2 Reference to the above publications is to the latest issues, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
 - Passenger cars
 - Station wagons
 - Buses and school buses when so designated
 - Light trucks up to 10,000 lb. GVW.
 - Heavy trucks when indicated

4. *Detail Requirements*4.1 *Definitions*

- 4.1.1 *Seat Frame*—The seat frame is the structural portion of a seat assembly.
- 4.1.2 *Upper Crossbar*—The upper crossbar is the uppermost horizontal member of a seat-back frame.
- 4.1.3 *Seat Adjuster*—The seat adjuster is the device anchored to the seat frame and provides for seat adjustments. This includes any track, link, or power actuating assembly to adjust the seat position.

4.2 *Front Seats*

- 4.2.1 *Seat-Adjustment Mechanism and Seat-Frame Combinations*—Each combination of seat-adjustment mechanism and seat frame, together with attachments, shall be constructed and anchored to the vehicle

structure that supports it so as to resist a horizontal forward or rearward static load not less than 20 times the weight of the complete seat assembly. Each seat-back frame shall withstand a rearward (in relation to the seat) movement about the "H" point (SAE J826) of 3,300 inch-pounds for each designed seating position. The required load or loads for each designed seating position shall be applied simultaneously to the seat back frame upper crossbar at the vertical centerline of each seating position.

- 4.2.2 Fixed Seat Frame Combinations**—Each nonadjustable seat frame combination, with attachments, shall be constructed and anchored to the vehicle structure that supports it so as to sustain a horizontal and rearward static load not less than 20 times the weight of a fully trimmed seat. Each seat back frame shall withstand a rearward static moment about the "H" point (SAE J826) of 3,300 inch-pounds for each passenger for which the seat back is designed. The load required to attain this moment shall be applied simultaneously to the seat back frame upper crossbar at the vertical center line for each seating position.
- 4.2.3 Folding-Seat Back Frames**—Each seat-back frame designed to fold over the seat shall be equipped with a releasable, self-locking, restraining device or devices. The lock release shall be readily accessible to the occupant of the seat and, if applicable, shall permit egress of rear-seat passengers. The locking device shall be so designed and located as to minimize accidental release in collisions. The restraining device or devices shall be constructed to prevent the seat-back frame assembly from folding forward under a horizontal static load not less than 20 times the weight of the fully trimmed seat back frame, with the frame in a locked position. It shall withstand a rearward moment about the "H" point (SAE J826) of 3,300 inch-pounds for each designed seating position. The load or loads required for each designed position shall be applied simultaneously to the seat-back frame upper crossbar at the vertical centerline of each seating position. Excluded are tilt-type drivers' seats installed in special-purpose stand-up walk-in delivery vehicles.
- 4.2.4 Pedestal Seats**—Pedestal-mounted drivers' seats designed to pivot forward, installed in special-purpose stand-up walk-in type delivery vehicles, shall be equipped with releasable self-locking pedestal-restraining devices. The restraining device shall be constructed with sufficient strength to prevent the seat assembly from tilting forward under a horizontal static load not less than 20 times the weight of the fully trimmed seat and components. The load shall be applied with the seat pedestal in a locked position and at the level of the centre of gravity of the seat assembly.
- 4.3 Rear Seats and Intermediate Seats**
- 4.3.1 Forward and Rearward Fixed Seat Frame Combinations**—Each combination with attachments shall be constructed and anchored to the vehicle structure so as to withstand the loads specified in 4.2.2.

4.3.2 *Forward and Rearward Facing Detachable Seat-Frame Combinations*—Each combination, with attachments, shall be constructed and anchored to the vehicle structure so as to withstand the loads specified in 4.2.2.

4.3.3 *Longitudinally Mounted Seat Frame Combinations*—Each combination, with attachments, shall be constructed and anchored, either permanently or by detachable fittings, to the vehicle structure so as to withstand a horizontal forward and rearward (in relation to the vehicle) static load not less than 20 times the weight of the fully trimmed seat.

4.3.4 *Folding Seats*—Seats designed to pivot forward on their forward attachment to the vehicle structure shall be equipped with a releasable, self-locking restraining device or devices. The lock release shall be readily accessible to the occupant of the seat and if applicable, shall permit egress of a passenger seated to the rear. The release shall be so designed and located as to minimize accidental release in collision. The restraining device shall be constructed with sufficient strength to prevent the seat assembly from folding forward or displacing under a horizontal static load not less than 20 times the weight of the fully trimmed seat assembly.

4.3.5 *Folding-Seat Back Frames*—Folding seat back frames of intermediate and rear seats shall conform to the requirements of 4.2.3.

4.4 *Seats Designed to Provide Seat-Belt Anchorage*—In passenger cars, station wagons, and light and heavy trucks, seat frames and seat-back frames designed to provide anchorages for seat belts shall be constructed and anchored to the vehicle structure that supports them so as to resist an additional forward static load not less than 2,500 pounds for each lap belt end attached, or 3,000 pounds for each combination lap and shoulder belt end.

4.5 *Buses*

4.5.1 *Driver's-seat frames and seat-back frames designed to provide anchorages for seat belts* shall be constructed and anchored to the vehicle structure that supports them so as to sustain an additional static forward load not less than 2,500 pounds for each combination lap and shoulder belt end.

4.5.2 *Passenger Seats*—Passenger-seat frames and seat-back frames designed to provide anchorages for seat belts shall be constructed and anchored to the vehicle structure that supports them to sustain an additional forward static load not less than 2,500 pounds for each lap belt end attached.

4.6 *Test Procedures*

4.6.1 Testing of front seats shall be in accordance with SAE J879; testing of intermediate and rear seats shall be accomplished by applying similar procedures.

- 4.6.2 Testing of seats designed to provide seat-belt anchorages shall be in accordance with SAE J787.

NOTE: Some energy absorption under impact can be obtained through deflection of the seat back. Therefore, some deflection and permanent set of the seat back consistent with rigidity requirements and normal occupant accommodations is permissible.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-7

1 November 1966.

STANDARD
for
FOUR-WAY FLASHER
for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard describes a driver-controlled system of vehicle warning lights that will cause all turn-signal lamps to flash simultaneously and indicate to approaching drivers the presence of a road hazard.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:
- 2.1.1 *Society of Automotive Engineers (SAE)*
J910, Recommended Practice for Vehicular Hazard Warning Signal Operating Unit
J945, Automotive Flashers
- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
- Passenger cars
Station wagons
Buses and school buses
Light trucks and standard commercial trucks

4. *Detail Requirements*

- 4.1 Components and tests for this Standard shall be in accordance with SAE J910, except that the flasher shall be tested in accordance with SAE J945.
- 4.2 *Life Test Requirement*—The flasher, with maximum lamp load to be used on the vehicle, shall be subjected to a test of 50 hours duration during which the flasher shall be operated 12 hours and allowed to rest 40 minutes, and this cycle repeated for the remainder of the test period.

5. *Notes*

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4 Canada.

97-GP-8

1 November 1966.

STANDARD

for

SAFETY GLAZING MATERIALS

for AUTOMOTIVE VEHICLES

1. Definition

- 1.1 This standard establishes requirements for safety glazing materials for automotive vehicles.

2. Applicable publications

- 2.1 The following publication is applicable to this standard:
 - 2.1.1 *United States of America Standards Institute (USASI*)*
Z26.1, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highway.
- 2.2 Reference to the above publication is to the latest issue, unless otherwise specified.

3. Applicability

- 3.1 This standard applies to:
 - Passenger cars
 - Station wagons
 - Buses and school buses
 - Light trucks and standard commercial trucks.

4. Detail Requirements

- 4.1 Safety glass used in the windshields, windows, doors and other glazed openings in vehicles covered by this Standard shall comply with the requirements of USASI Z26.1.
- 4.2 Windshields shall be glazed with laminated safety glass.

5. Notes

- 5.1 The publication listed in Section 2 is available from the CGSB Secretary.

*Formerly American Standards Association (ASA)

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, Department of Defence Production, Ottawa 4, Canada.

97-GP-9

1 November 1966

STANDARD

for

DUAL BRAKE SYSTEM

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for dual (split) hydraulic or dual air service brake systems installed in automotive vehicles.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:

- 2.1.1 *Society of Automotive Engineers (SAE)*
J843, Standard for Brake System Road Test Code for Passenger Cars
J937, Standard for Service Brake Performance Requirements of Passenger Cars
- 2.1.2 Uniform Vehicle Code of the United States National Committee on Uniform Laws and Ordinances.
- 2.2 Reference to the above publications is to the latest issue unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:

Passenger cars
Station wagons
Buses and school buses
Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 *Service Brake System Performance*—The performance ability of the fully operational service brake system for passenger cars and station wagons shall be not less than that described in SAE J937 and J843. The performance ability of the fully operational service brake system for buses and light trucks up to 10,000 pounds GVW shall be not less than that described in Section 12-392 of the Uniform Vehicle Code.
- 4.2 *Design*—The service brake system shall be of such design that rupture or failure of an actuating-pressure component in the system shall not result in complete loss of function of the service brake system. Mechanical linkage or other means of brake application may

be utilized to meet this requirement provided that continuation of the same motion on the same brake pedal used to actuate the normal system applies or actuates the braking force. The hydraulic fluid system shall be sealed to protect the brake fluid from outside contamination.

NOTE: Actuating-pressure components are defined as: the brake master cylinder or master control unit, wheel brake cylinder, brake line, brake hose or equivalent.

- 4.3 *System Effectiveness Indicator*—Failure of the system shall be indicated by means of an electrically operated red light mounted on the instrument panel. The light shall have an area of not less than 0.196 square inch. It shall light up before or upon application of the brakes when an actuating-pressure component of the system has sustained a loss of pressure. The indicator light system shall include a means for the vehicle operator to assure that the light system is operational.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97—GP—10

1 November 1966.

STANDARD

for

HEIGHT AND EXTENSION OF BUMPERS
for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes the height for contact surfaces of front and rear bumpers and guards for automotive vehicles, to provide protection against damage due to vehicle-to-vehicle contact, such as in parking operations.

2. *Applicable Publications*

Nil.

3. *Applicability*

- 3.1 This standard applies to:

Passenger cars
Station wagons
Pick-up trucks

4. *Detail Requirements*

- 4.1 When the vehicle is loaded, front and rear bumpers and guards shall present a contact line between the wheel treads within a 1-inch band enclosed between the heights of 17 and 18 inches above the road level. A "loaded" vehicle is defined as the "curb weight" plus "accessory weight" (see 5.1) plus 150 pounds for each passenger, distributed as two passengers in the front seat and one passenger in the rear seat. (See 5.2.)
- 4.2 Bumpers and guards shall extend beyond the projections of any lights. Compliance with this requirement may be determined by bringing the exterior face of the bumpers and guards into contact with a vertical surface and assuring that no contact is made between any light and the vertical surface.

5. *Notes*

- 5.1 *Curb weight* is defined as the weight of the vehicle with standard equipment including the maximum capacity of engine fuel, oil and coolant, and air conditioning and optional engine weights if so equipped.

Accessory weight—consists of automatic transmission; power-operated steering, brakes, windows and seats; radio and heater whether present or not.

- 5.2 In vehicles having hydro-pneumatic, hydraulic, air pressure suspension, or automatic load-levelling devices, the contact line shall be measured when the engine is in operation.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97—GP—11

1 November 1966.

STANDARD

for

STANDARD GEAR QUADRANT (P R N D L)

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for the lever-controlled sequence of shifting mechanisms for automatic transmissions installed in automotive vehicles.

2. *Applicable Publications*

- 2.1 Nil.

3. *Applicability*

- 3.1 This standard applies to:
Passenger cars
Station wagons
Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 *Sequence*—The sequence of the lever-control mechanism when viewed from the driver's seat in the clockwise order shall be:

Park (P)
Reverse Drive (R)
Neutral (N)
Forward Drive (D)
Low Forward Drive (L)

Neutral shall be positioned between forward-drive and reverse-drive positions, and in no case shall any forward-drive position be adjacent to any reverse-drive position.

- 4.2 *Low Forward-Drive Braking Effect*—When selected and engaged, the low forward drive position shall provide a braking effect upon deceleration, and the transmission shall be so designed that automatic upshift through the transmission range is blocked effectively for all speeds and loads within the speed range up to and including 25 miles per hour.

- 4.3 *Park Position*—The transmission lever-control sequence mechanism of passenger cars and station wagons may be provided with a park position. When so provided and engaged, it shall initiate a positive

lock for the purpose of preventing the drive wheels of the vehicle from moving.

- 4.4 *Safety Feature*—Automatic transmissions, whether installed in passenger cars or trucks, shall have the starting circuit so connected that it is impossible to start the engine unless the transmission is in the "park" or "neutral" position.

97-GP-12

1 November 1966.

STANDARD

for

WINDSHIELD WIPERS AND WASHERS

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for windshield wiping and washing systems to be installed in automotive vehicles.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:
 - 2.1.1 Society of Automotive Engineers (SAE)
 - J826, Manikins for Use in Defining Vehicle Seating Accommodation
 - J903, Passenger Car Windshield Wiper Systems
 - J941, Passenger Car Driver's Eye Range
 - J942, Passenger Car Windshield Washer Systems
- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
 - Passenger cars
 - Station wagons
 - Buses and school buses
 - Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*4.1 *Windshield Wipers*

- 4.1.1 Windshield wipers shall comply with SAE J903.
- 4.1.2 The windshield wiper system shall be driven by a motor, actuated by a conveniently located control with which the driver of the vehicle may vary the speed of the wipers. The windshield wiper blades, when in the parked position, shall be clear of the vision area.
- 4.1.3 The windshield wiper system shall be designed to provide two or more speeds and each speed shall be constant regardless of engine load.

4.2 *Windshield Washer System*

- 4.2.1 Windshield washer systems shall comply with SAE J942.

- 4.2.2 The windshield washer system shall include a container holding at least 48 ounces of usable fluid.
- 4.2.3 The container shall be made of such material that it will not fracture or break if the fluid freezes.
- 4.2.4 The fluid shall be applied to the outside of the windshield in a suitable pattern under a reasonable range of vehicular operating conditions so that the windshield wipers will perform effectively in accordance with SAE J942.
- 4.3 *Wiped Area*—The following requirements for minimum area to be wiped shall apply to passenger cars, station wagons and light trucks only.
 - 4.3.1 The requirements for area to be wiped are based on and established for high-speed wiper operation, a wet windshield, and a minimum relative air speed of 70 miles per hour. The boundaries of the minimum wiped area shall be established on the windshield by planes originating from the 95th percentile tangential cutoff two-dimensional eye-range contours in accordance with SAE J941. With the driver's seat in the rearmost position, the glazing surface reference line (Figure 1) is the line of intersection of the glazing surface and a horizontal plane 25 inches above the "H" point (SAE J826). The plan view reference line (Figure 2) is the line outboard of the steering wheel centerline, and is parallel to the vehicle centerline at a distance 0.15 of the dimension from the steering wheel centerline to the left-hand extremity of shoulder room. This dimension can be determined by taking 0.50 of the shoulder-room dimension, minus the distance from steering-wheel centerline to centerline of car, multiplied by 0.15 (Figure 2).
 - 4.3.2 The minimum area requirements are defined by the use of three specific areas (A, B and C of Table 1) on the windshield glazing surface. Referring to Figure 1, the upper and lower boundaries of each area shall be established by the intersection of two planes, tangential to the upper and lower sides of the eye-range contour, with the windshield glazing surface. The planes shall be fixed by angles above (angle Y) and below (angle Z) the glazing surface reference line. Referring to Figure 2, the left and right boundaries of each area shall be established by the intersection of two planes tangential to the sides of the left and right eye-range contours. The planes shall be fixed by angles to the left (angle W) and right (angle X) of the plan view reference line. Table 1 provides the minimum angular dimensions that establish the boundaries for areas A, B and C.
 - 4.3.3 Area A in Table 1 is the largest specified portion of the windshield glazing surface, and not less than 80 per cent of this area shall be cleanly wiped. Area B of Table 1 is a smaller area providing a broad horizontal band across the windshield glazing surface. Area B shall be cleanly wiped over not less than 95 per cent of its total area. These allowances are made in recognition of the geometry of modern wiper systems. Area C in Table 1, the smallest area directly in front

of the vehicle operator, shall be cleanly wiped over 100 per cent of its total area. In no instance shall there be an unwiped area at or near the horizontal center of the windshield, produced by either a tandem or an opposed system, that extends below the glazing surface reference line. The left windshield wiper blade shall, at any point, wipe to within 2 inches of the left corner "A" post.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

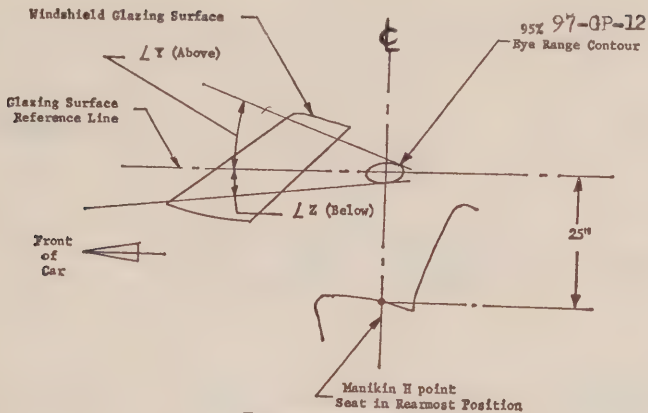


FIGURE 1.—Side view.

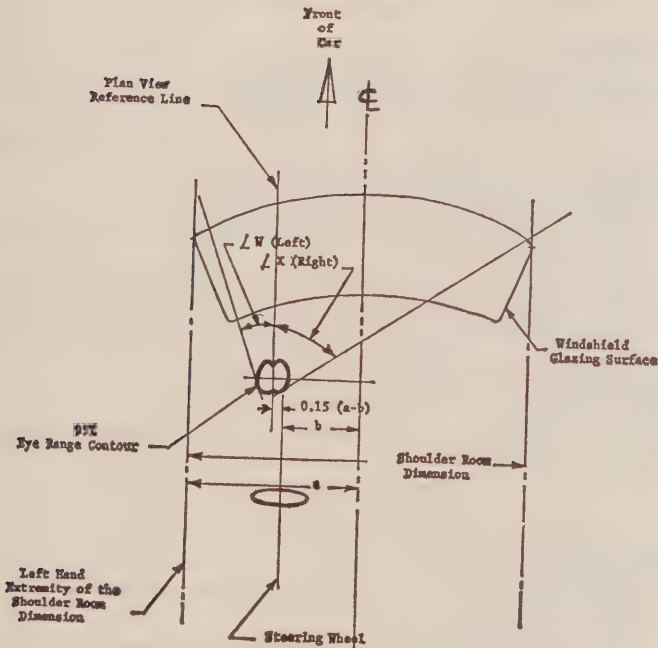


TABLE I

Area	Percent wiped area	Angles			
		Left ∠ W degrees	Right ∠ X degrees	Up ∠ Y degrees	Down ∠ Z degrees
	Minimum	Minimum	Minimum	Minimum	Minimum
A.....	80	18	80	10	5
B.....	95	14	13	5	3
C.....	100	10	15	5	1

97-GP-13
STANDARD
for
GLARE-REDUCTION SURFACES
of AUTOMOTIVE VEHICLES

1 November 1966.

1. Definition

- 1.1 This Standard establishes glare and reflection limits for vehicle components within the operator's field of view, to achieve the most practical reduction of distracting reflectance.

2. Applicable Publications

- 2.1 The following publications are applicable to this Standard:

2.1.1 *American Society for Testing and Materials (ASTM):*

D307, Method of Test for Spectral Characteristics and Color of Objects and Materials.

D523, Method of Test for Specular Gloss

D791, Method of Test for Luminous Reflectance, Transmittance, and Color of Materials

D1535, Method of Specifying Color by the Munsell System

E97, Method of Test for 45-degree and 0-degree Directional Reflectance of Opaque Specimens by Filter Photometry.

2.1.2 *Society of Automotive Engineers (SAE):*

J941, Passenger Car Driver's Eye Range

- 2.2 Reference to the above publications is to the latest issues, unless otherwise specified.

3. Applicability

- 3.1 This standard applies to:

Passenger cars

Station wagons

Buses and school buses

Light trucks and standard commercial Trucks.

4. Detail Requirements

4.1 Definition

- 4.1.1 *Field of View*—With the operator's seat in the rearmost position, the operator's field of view is the area forward of a lateral vertical plane located tangential to the rearmost boundary of the 99th percentile eyerange contour of SAE J941, and extending to the area behind the

"A" post back to the side windows. Behind the "A" post, glare reduction may be limited to bright metal surfaces around, inside, and outside-adjacent to the windows of the vehicle. The area below the instrument panel is excluded.

4.1.2 *Glare*—Glare is the visual effect of any source of light in the field of vision that either dilutes or competes with the field of view on which the driver's attention is being focused.

4.1.3 *Specular Gloss*—Specular gloss is the luminous fractional reflectance of a specimen at the specular direction.

4.1.4 *Luminous Directional Reflectance*—Luminous directional reflectance is the ratio of flux reflected to that from a perfect diffuse reflector similarly illuminated and viewed.

4.1.5 *Saturation* (Munsell Chroma)—Saturation is the attribute of color perception that expresses the degree of departure from gray of the same lightness. (All grey colors have zero saturation.)

4.2 *Detail Requirements*

4.2.1 *Instrument Panels*

4.2.1.1 The specular gloss of the surface of the material used for instrument-panel top surfaces and appurtenances shall not exceed 30 units when measured by the 85-degree (ASTM D523) or equivalent method.

4.2.1.2 The luminous directional reflectance of the surface of the material used for instrument-panel top surfaces shall not exceed 30 per cent (which is equivalent to a Munsell value of less than 6.0/—) when measured in accordance with ASTM D307, D791, D1525, E97 or equivalent method.

4.2.1.3 The saturation (Munsell Chroma) of instrument-panel top surfaces shall be not more than $\frac{1}{6}$, when measured in accordance with (ASTM D1535) or equivalent method.

4.2.2 *Windshield Wiper Arms and Blades*—The specular gloss of the surface of the material used for windshield wiper arms and blades shall not exceed 40 units when measured by the 20-degree ASTM D523 or equivalent method.

4.2.3 *Other Surfaces*—The specular gloss of the surface of the material used for instrument bezels, windshield molding, control devices, horn ring, inside and outside rearview mirrors and mounting hardware, trim hardware, etc., in the operator's field of view, shall not exceed 40 units when measured by the 20-degree (ASTM D523) or equivalent method.

4.3 Instruments, control devices, etc., shall present a minimal reflection into the windshield under day and night driving conditions.

5. Notes

5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-14
STANDARD
for
TIRES AND RIMS
for AUTOMOTIVE VEHICLES

1 November 1966.

1. *Definition*

- 1.1 This standard establishes requirements for tires and rims for automotive vehicles.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this Standard:
- 2.1.1 *Society of Automotive Engineers (SAE)*
J918, Passenger Car Tire Performance Requirement and Test Procedures
- 2.1.2 Canadian Government Specifications Board (CGSB) 20-GP-5, Tires: Pneumatic, Vehicle and Mobile Ground Equipment.
- 2.1.3 The Tire and Rim Association (TRA) Year Book 1965-66.
- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
- Passenger cars
Station wagons
Buses and school buses
Trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 *Tires*—Tires supplied for use on automotive vehicles shall comply with the requirements of CGSB 20-GP-5.
- 4.1.1 *Rated Capacity*—At the inflation pressure recommended by the vehicle manufacturer, each tire shall have a rated capacity at least equal to the total load on each axle divided by the number of tires on the axle. This capacity shall be in accordance with the TRA Year Book, provided that the inflation pressure does not exceed the maximum stipulated for the size and ply-rating of the tire furnished.
- 4.1.2 A "fully loaded" vehicle shall include the indicated weights as follows:

- 4.1.2.1 *Passenger cars*—curb weight (5.1) plus accessory weight (5.2), plus 150 pounds for each of the rated number of passengers, plus 200 pounds trunk load.
- 4.1.2.2 *Station Wagons*—curb weight (5.1) plus the accessory weight (5.2), plus 150 pounds for each of the rated number of passengers, plus 300 pounds distributed load.
- 4.1.2.3 *All other vehicles*—the fully specified gross vehicle weight distributed as closely as possible to load each axle to its rated capacity.
- 4.2 *Rims for Passenger Cars and Station Wagons*—Automotive vehicles shall be equipped with rims conforming to, or wider than, the minimum widths listed in the TRA Year Book for the size and ply-rating of the tire furnished.
- 4.2.1 In the event of rapid loss of inflation pressure with the vehicle traveling in a straight line at a road speed of 60 miles per hour, the rim shall retain the deflated tire until the vehicle can be stopped by controlled braking (5.3).
- 4.3 *Resistance to Tire Bead Unseating—Passenger Cars and Station Wagons*—When tested in accordance with SAE J918, the applied force required to unseat the tire bead at the point of contact shall be not less than 2,500 pounds.

5. Notes

- 5.1 *Curb weight* is defined as the weight of the vehicle with standard equipment including the maximum capacity of engine fuel, oil and coolant; and air conditioning and optional engine weights if so equipped.
- 5.2 *Accessory weight*—consists of automatic transmission; power steering, brakes, windows and seats; radio and heater whether present or not.
- 5.3 For test purposes, an explosive device may be used to induce rapid loss of inflation pressure.
- 5.4 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-15

1 November 1966

STANDARD

for

BACK-UP LIGHTS

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for an automotive vehicle back-up light system, to warn pedestrians and drivers of approaching vehicles that the vehicle may move or is moving in reverse direction, and to provide illumination to the rear.

2. *Applicable Publications*

- 2.1 The following publication is applicable to this standard:
- 2.1.1 *Society of Automotive Engineers*(SAE)
J593, Back-Up Lamps
- 2.2 Reference to the above publication is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
- Passenger cars
Station wagons
Light trucks up 10,000 lb. GVW.

4. *Requirements*

- 4.1 The back-up light system shall consist of two white lamps that, when the ignition is on, shall light up automatically whenever the vehicle transmission is in the reverse gear.
- 4.2 The back-up light system shall conform to the requirements of SAE J593.

5. *Notes*

- 5.1 This standard should also be considered for buses, school buses, and standard commercial heavy trucks and truck units.
- 5.2 The publication listed in Section 2 is available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-16

1 November 1966

STANDARD

for

REARVIEW MIRRORS

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for rearview mirrors for automotive vehicles to provide the driver with reasonably unobstructed vision to the rear and in adjacent traffic lanes.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:

- 2.1.1 *Society of Automotive Engineers (SAE)*
J826, Manikins for Use in Defining Vehicle Seating Accommodation
J941, Passenger Car Driver's Eye Range
J964, Test Procedure for Determining Reflectivity of Rearview Mirrors

- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:

Passenger cars
Station wagons
Bus and school buses
Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 *Mirror Construction*—The reflective medium shall be of a material that will resist abrasion and erosion incident to accepted cleaning practices. The surfaces of the material shall be finished to provide and maintain a distortion-free reflected image. Front or second-surface reflectance may be used. The reflectance value of the reflective film employed shall be not less than 50 per cent. Inside mirrors may be of the selective position prismatic type, in which case the reflectance value in the night-driving, high-glare position shall be not less than 4 per cent.
- 4.2 *Reflectance Value*—The reflectance value of inside and outside rear-view mirrors shall meet the requirements of SAE J964.

4.3 *Inside Mirrors*

4.3.1 *Size*—The rearview mirror shall have a horizontal dimension that will provide the driver with a view to the rear of the vehicle with a horizontal angle of not less than 20 degrees. The vertical angle of rear vision shall be at least sufficient to provide a view of the road surface beginning at a point not more than 200 feet to the rear of the vehicle, and continuing to the horizon, under conditions of a level road and with the vehicle occupied by the driver and rated number of passengers in the case of passenger cars and station wagons, or loaded to gross vehicle weight in the case of buses and light trucks where inside mirrors may be applicable.

4.3.2 *Location*—The rearview mirror shall be mounted on the inside of the vehicle to provide the driver with a stable, readily distinguishable image under normal road conditions. The mirror shall be located as far forward in the vehicle as the windshield, mount, and adjusting device will permit (buses excepted) and above the upper 95th percentile tangential cutoff of the eye range contour (SAE J941). Deviations in vertical positioning will be permitted when required to meet the vertical field of view requirements to the rear. Extra large bus mirrors designed to serve the additional purpose of passenger surveillance shall be located with due consideration of the preceding requirements.

4.3.3 *Mounting*

4.3.3.1 The mirror shall be mounted in the vehicle by means of a suitable supporting assembly of sufficient strength to provide a stable support for the mirror, and shall be of a design that will minimize injury potential to occupants. The rim of the mirror or its supporting bezel shall have an edge radius of not less than 0.125 inch unless constructed of force-distributing materials. The mount shall provide for universal adjustment of the mirror to accommodate any size of driver in any available seat position; if in the head impact area, the mount shall be designed to break away or collapse upon the application of a force not exceeding 90 pounds, in the direction applied by the head of a seat-belted occupant. Rigid mounts shall break without leaving protruding residuals.

4.3.3.2 The head impact area shall be established through the use of 97-GP-1 Type 1 seat belt restrained manikins or other test devices having "H" point (SAE J826) to top-of-head dimensions of 33 inches and 29 inches. Adjustable seats shall be in the extreme forward-driving or riding position for the indicated 33-inch device and in the extreme rearward position for the indicated 29-inch device. The head impact area shall be that included between the arcs formed by the top-of-head point when each device is swung forward and also 45 degrees to each side of the longitudinal axis through each designed seating position.

4.4 *Outside Mirrors*

4.4.1 *Size*—The outside mirror reflecting surface shall have a minimum nominal diameter of 5 inches if of circular design. Rectangular

mirrors shall have a minimum nominal horizontal dimension of 5 inches and a vertical dimension sufficient to provide the driver with a view of the road surface beginning at a point not more than 35 feet to the rear and continuing to the horizon on a level road under all load conditions. The 35 feet shall be measured from the forward position of the 95th percentile tangential cutoff of the eye range contour (SAE J941) to the reflecting surface, then to the roadway to the rear of the vehicle.

4.4.2 *Mounting*—The outside rearview mirror shall be mounted on the left outside of the vehicle to provide the driver with a stable, readily distinguishable image under normal road conditions and with not more than 60 degrees combined head and eye movement. For buses with conventional truck chassis, a combined head and eye movement not exceeding 90 degrees shall be permitted. The outside mirror shall provide the operator, with seat in full forward position, a view of the side of the vehicle on which it is mounted. The mirror shall not be obscured by the unwiped portion of the windshield or by the corner pillar. The mirror shall be readily adjustable to accommodate different sized drivers, seat positions and load conditions. The mirror and mount shall be designed, constructed, located and mounted to minimize pedestrian injury.

4.4.3 *Additional Outside Rearview Mirror*—Station wagons, buses and trucks shall be provided with an additional outside rearview mirror to provide driver vision to the right rear areas adjacent to the vehicle that may be obscured by vehicle design or load conditions. The visual characteristics of the right outside mirror shall conform to the requirements for the left outside mirror except that the restrictions on combined head-and-eye movement may be relaxed to the extent dictated by vehicle design. Design, construction, location and mounting requirements of the right outside mirror shall be as close as possible to those for the left outside mirror except that, where necessary, consideration may be given to location and mounting problems dictated by vehicle design.

4.5 *Wide-Angle Mirror*

4.5.1 When specified, an auxiliary wide-angle (convex) mirror may be incorporated in or on the same mount as the standard mirror to provide an additional close in field of vision required under certain operating conditions.

4.5.2 The auxiliary mirror shall not interfere with the visual field of the standard mirror.

5. Notes

5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-17

1 November 1966

STANDARD

for

REAR WINDOW VISION AID

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for the performance of a fog prevention or removal device designed to achieve the most effective vision through the rear window.

2. *Applicable Publications*

- 2.1 The following publication is applicable to this standard.
 - 2.1.1 *Society of Automotive Engineers (SAE)*:
J953, Passenger Car, Back Light Defogging System.
 - 2.2 Reference to the above publication is to the latest issues, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to passenger cars except convertibles and station wagons.

4. *Detail Requirements*

- 4.1 Each vehicle shall be permanently equipped with a device to ensure that not less than 75 per cent of the inside of the rear window area will remain free from frost and fog when the vehicle, with windows closed, containing the rated passenger load is driven one hour at any speed, in air at 0°F and 90 per cent relative humidity.

4.2 *Testing*

Testing of the defogger system shall be in accordance with SAE J953.

5. *Notes*

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-18
STANDARD
for
WINDOW AND DOOR CONTROLS
for AUTOMOTIVE VEHICLES

1 November 1966.

1. Definition

- 1.1 This standard establishes the requirements for the location and construction of the controls for windows and doors of automotive vehicles.

2. Applicable Publications

- 2.1 The following publications are applicable to this Standard:
- 2.1.1 *Society of Automotive Engineers (SAE)*
J826, Manikins for Use in Defining Vehicle Seating Accommodation
 - 2.1.2 United States Public Health Service Publication No. 1000, Series 11, Number 8.
- 2.2 Reference to the above publications is to the latest issues, unless otherwise specified.

3. Applicability

- 3.1 This standard applies to:
- Passenger cars
 - Station wagons
 - Light trucks up to 10,000 lb. GVW.

4. Detail Requirements

- 4.1 Injury potential shall be minimized by constructing, locating and mounting the controls to reduce the likelihood of injury to the head, torso and legs of occupants restrained by 97-GP-1 Type 1 seat belts in rear and front seats.
- 4.2 *Impact Areas*
- 4.2.1 SAE J826 forms a basis for this standard pertaining to head, knee, and leg impact areas.
 - 4.2.2 The head impact area shall be established using manikins restrained by a 97-GP-1 Type 1 seat belt, or other test devices, having "H" point to "top-of-head" dimensions of 33 and 29 inches. Adjustable seats shall be in the extreme forward driving or riding position for the indicated 33-inch device and in the extreme rearward position for the indicated 29-inch device. The head impact area is the area

between the arcs formed by the "top-of-head" points with the devices placed at each designed seating position and then swung forward and at least 90 degrees to each side of the longitudinal axis or as far as the vehicle body structure will permit.

- 4.2.3 The knee and leg impact areas on the doors shall be established by swinging the manikin's knees and legs 45 degrees right and left, or as far as the vehicle body structure will permit, with the seat in its rearmost position, using a manikin restrained by a Type 1 seat belt, with leg dimensions of the normally seated 95th percentile male defined in U.S. Public Health Service Publication No. 1000, Series 11, Number 8, or other test device.
- 4.2.4 Impact areas in all portions of the windows and doors that may be contacted, shall be determined by swinging the manikin's knees and legs 45 degrees right and left, or as far as the vehicle body structure will permit, at each outboard designed seating position with the manikin's "H" point moved horizontally forward 10 inches and its feet resting in their normal toe board position.
- 4.3 The controls shall be located within reach of the seat-belted occupant nearest the door. Controls located away from or shielded from the impact area, or recessed within the panel or armrest in such a manner as to reasonably minimize the likelihood of contact by occupants, shall be considered to provide an acceptable degree of protection.
- 4.4 Door handle controls not meeting 4.3 shall be constructed so as to have a contact area of not less than 2 square inches, substantially vertical, with minimum radii of 0.125 inch. Window control knobs not meeting 4.3 shall have a minimum contact area of not less than 1 square inch, with minimum edge radii of 0.125 inch. All controls shall have a maximum extension from the panel of 1 inch, except that force-distributing material covering the controls may extend beyond the 1 inch dimension.
- 4.5 Controls not meeting 4.3 or 4.4 shall be constructed of material that will deflect within 1 inch of the panel, or be detached by a force of 90 pounds leaving no residual protrusions beyond the panel surface on which they are mounted.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-19

1 November 1966.

STANDARD

for

ASH TRAYS AND LIGHTERS
FOR AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for ash trays and lighters in automotive vehicles, including their convenient location and safe construction, to provide protection for front- and rear-seated occupants wearing 97-GP-1. Type I. seat belts.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:
 - 2.1.1 *Society of Automotive Engineers (SAE)*
J826, Manikins for Use in Defining Vehicle Seating Accommodation.
 - 2.1.2 United States Public Health Service Publication No. 1000,
Series 11, Number 8 — Weight, Height, and Selected Body
Dimensions of Adults.
- 2.2 Reference to the above publications is to the latest issue, unless other specified.

3. *Applicability*

- 3.1 This standard applies to:
Passenger cars
Station wagons
Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 *Construction, Location and Mounting*
 - 4.1.1 Ash trays and lighters shall be constructed, located and mounted so as to minimize injury to the occupant's head, torso and legs upon impact.
- 4.2 *Provision, Location and Construction*
 - 4.2.1 Where feasible, ash trays shall be provided for each outboard passenger of front and rear seats, readily accessible, and within the reach of a 95 percentile male manikin restrained by a 97-GP-1, Type I seat belt, with the front seats in the mid-riding or driving position.

- 4.2.2 Ash trays and lighters shall be shielded, located away from the impact area, or recessed to minimize the likelihood of contact by the head, torso, or legs of occupants wearing 97-GP-1, Type I seat belts.
- 4.2.3 Open ash trays with lighters not meeting 4.2.2 shall have a contact area of not less than 1.0 square inch in the direction of impact and shall have minimum edge radii of 0.125 inch. Such ash trays and lighters shall either deflect or recede to within 0.375 inch of the mounting or be detachable by a force not exceeding 45 pounds.

4.3 Impact Area

- 4.3.1 The head impact area shall be established by using manikins restrained by a 97-GP-1, Type I seat belt, or other test devices, having "H" point to "top-of-head" dimensions of 33 and 29 inches (SAE J826). Adjustable seats shall be in the extreme forward-driving or riding position for the indicated 33-inch device and in the extreme rearward position for the indicated 29-inch device. The head impact area is the area between the arcs formed by the "top-of-head" points with the devices placed at each designed seating position and then swung forward and at least 90 degrees to each side of the longitudinal axis, or as far as the vehicle body structure will permit. The knee and leg impact areas on the doors shall be established by swinging the manikin's knees and legs 45 degrees right and left, or as far as the vehicle body structure will permit, with the seat in its rearmost position, using manikins restrained by a 97-GP-1, Type I seat belt, with leg dimensions of the normally seated 95 percentile male manikin as described in U.S. Public Health Service publication, or by other test devices.
- 4.3.2 Impact areas in all portions of the instrument panel and doors that may be contacted shall be determined by swinging the manikin's knees and legs 45 degrees right and left, or as far as the vehicle body structure will permit, at each designed seating position with the manikin's "H" point moved horizontally forward 10 inches and its feet resting in their normal toe board position.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Dept. of Defence Production, Ottawa 4, Canada.

97-GP-20
1 November 1966.
STANDARD
for
ARM RESTS
for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for arm rests installed in automotive vehicles, to afford a reasonable degree of protection for front- and rea-seated occupants wearing 97-GP-1 Type 1 seat belts.

2. *Applicable Publications*

- 2.1 The following publication is applicable to this standard:
- 2.1.1 *Society of Automotive Engineers (SAE)*:
J826, Manikins for Use in Defining Vehicle Seating Accommodations
- 2.2 Reference to the above publication is to the latest issue, unless otherwise specified.

3. This Standard applies to:

Passenger cars
Station wagons
Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*

- 4.1 Arm rests shall be constructed and mounted so as to minimize force and spread the area of impact by the occupant, under collision conditions.
- 4.2 *Location and Construction*
- 4.2.1 The innermost exposed surface of the arm rests shall be substantially vertical. In any normal position of the seat, the substantially vertical surface of the arm rest shall provide an area of broad contact with the pelvic region of not less than 2.0 inches vertically. The top and sides of the arm rests shall be constructed of flexible material or covered with force-distributing material at least 0.5-inch thick. The arm rests shall not have any sharp, narrow or protruding rigid edges in the impact area, either exposed or under the force-distributing material. The top and sides of the mounting bracket shall not have any rigid edges of less than 0.75 inch radius. If arm rests break upon impact, no sharp or jagged edges shall remain.

- 4.2.2 When constructed of flexible or foam-like material, the arm rests shall deflect to within 1.25 inches of the panel surface without permitting contact with any rigid material. Any rigid material between 0.5 and 1.25 inches from the panel surface shall have a minimum vertical height of not less than 1.0 inch. Upper and side edges of rigid material shall have a radius of not less than 0.75 inch.
- 4.2.3 Accessories or equipment attached to the arm rests shall meet the safety requirements applicable to such equipment or accessories and shall not nullify the injury-reducing characteristics specified for arm rests.

4.3 Impact Areas

- 4.3.1 The head impact area shall be established by using manikins restrained by a 97-GP-1 Type 1 seat belt, or other test devices, having "H" point (SAE J826) to "top-of-head" dimensions of 33 and 29 inches. Adjustable seats shall be in the extreme forward-driving or riding position for the indicated 33-inch device and in the extreme rearward position for the indicated 29-inch device. The head impact area is the area between the arcs formed by the "top-of-head" points with the devices placed at each designed seating position and then swung forward and at least 90 degrees to each side of the longitudinal axis, or as far as the vehicle body structure will permit. The knee and leg impact areas shall be established by swinging the manikin's knees and legs 45 degrees right and left, or as far as the vehicle body structure will permit, with the seat in its rearmost position, using manikins restrained by a 97-GP-1 Type 1 seat belt and with leg dimensions of the normally seated 95th percentile male or other test device.
- 4.3.2 Impact areas in all positions that may be contacted, shall be determined by swinging the manikin's knees and legs 45 degrees right and left, or as far as the vehicle body structure will permit at each designed seating position, with the manikin's "H" point moved horizontally forward 10 inches and with its feet resting in their normal toe board position.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4 Canada.

97-GP-21

1 November 1966.

STANDARD

for

PADDED SEAT-BACKS

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for seat-back frames constructed to absorb and dissipate energy imparted to the top and back, in the event of collision, by the upper torso, limbs and head of forward-facing passengers restrained by lap belts.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:

2.1.1 *Society of Automotive Engineers (SAE)*

J826, Manikins for Use in Defining Vehicle Seating Accommodation

J921, Instrument Panel Laboratory Impact Test Procedure

2.1.2 US Public Health Service Publication No. 1000, Series 11, Number 8.

- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:

Passenger cars

Station wagons

School buses Light Trucks up to 10,000 lb. GVS, with provision for forward-facing passenger seating within the cab in rear of the front seat.

- 3.2 The guardrail behind the driver's seat, and the grabrail behind or beside the service door in school buses, shall be considered as seat-back frames for the purpose of this standard.

4. *Detail Requirements*

- 4.1 The top and back of the front seats of passenger cars, the top of the back of forward-facing seats (except the rear-most seat) in station wagons, the top and back of all forward-facing seats in school buses (except the driver's seat and the rear-most seats) and the guardrail behind the driver's seat in school buses, shall be constructed and

padded with impact-absorbing material to minimize force build-up and to spread the area of contact by the impacting human body.

- 4.2 The guardrails, grabrails, and applicable areas of vertical stanchions shall contain no sharp nor protruding areas, and shall be constructed of or covered with at least 0.5-inch thick force-distributing cushioning material or other material that will reduce the likelihood of injury to the occupant upon impact.

4.3 Impact Areas

- 4.3.1 The head impact area is established by using manikins restrained by a 97-GP-1 Type 1 seat belt, or other test devices, having "H" point (SAE J826) to "top-of-head" dimensions of 33 and 29 inches. For school buses the "H" point to "top-of-head" dimensions shall be 33 and 21 inches. The head impact area is the area between the arcs formed by the "top-of-head" points with the devices placed at each designed seating position and then swung forward and at least 45 degrees to each side of the longitudinal axis, or as far as the vehicle body structure will permit.
- 4.3.2 The knee and leg impact areas are established by swinging the manikin's knees and legs 45 degrees right and left, or as far as the vehicle body structure will permit, using manikins restrained by a 97-GP-1 Type 1 seat belt and with the "H" point moved horizontally forward 10 inches, or other test devices, with leg dimensions of the normally seated 95th percentile male defined in U.S. Public Health Service Publication No. 1000, Series 11, No. 8.
- 4.4 *Test Procedures*—For test purposes, seat spacing in school buses shall be 27 inches. Spacing from the driver's guardrail, and from the modesty panel, to the front of the nearest seat cushion shall be 12 inches. Tests shall be in accordance with SAE J921, except that the vertical plane of the impacting normally seated device, while facing straight ahead, shall be rotated 45 degrees to the left and right. When the head form is impacting the seat back at 22 feet per second, the deceleration of the head form shall not exceed 80 g's excluding all portions of the deceleration time curve above the 80 g level of less than 1.0 millisecond duration. The "less than 1.0 millisecond" time of duration shall be that measured at the 80 g level of the deceleration time curve.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-22
STANDARD
for
HEADRESTS FOR FRONT SEATS
of AUTOMOTIVE VEHICLES

1 November 1966.

1. Definition

- 1.1 This standard establishes the requirements for front-seat headrests in passenger cars to afford a reasonable degree of protection from neck injury (whiplash) in the event of a rear-end collision.

2. Applicable Publications

- 2.1 The following publications are applicable to this standard:
- 2.1.1 Canadian Government Specifications Board (CGSB) 97-GP-21, Padded Seat Backs for Automotive Vehicles
- 2.1.2 *Society of Automotive Engineers* (SAE) J826, Manikins for Use in Defining Vehicle Seating Accommodation
- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. Applicability

- 3.1 This standard applies to:
- Passenger cars
Station wagons

4. Detail Requirements

4.1 Definition

- 4.1.1 *Headrest or Head Restraint* - A headrest or head restraint is defined as a well-padded area associated with a seat back for restraining rearward movement of the head.
- 4.2 A head-restraining device (headrest) shall be provided for each outboard front seat position. The head restraint may be an extension of or an attachment to the seat back. It may be provided with a transversely adjustable mounting.
- 4.3 The minimum width of the head restraint or headrest shall be 10 inches and the average width shall be at least 12 inches, both based on the forward-facing surface that can be contacted by the head of the occupant. The top of the head restraint, in its extreme "up" position if adjustable, shall be tangential to a plane that is perpendicular to the torso line of a two-dimensional manikin (SAE J826) and not

less than 27.5 inches from the "H" point. The forward surface of the head restraint shall be not less than 1.0 inch and not more than 4.0 inches rearward of the torso line, measured on a perpendicular.

- 4.4 The headrest or head restraint, including any supporting structure that can be contacted by the head of an occupant of the vehicle, shall be constructed to meet the requirement of CGSB 97-GP-21.
- 4.5 Structural deflection of the headrest or head restraint resulting from contact in rear-end collisions is allowable, except that rebound action shall be minimized. The headrest or head restraint and its supporting structure shall not fail prior to the failure of the seat back upon which it is mounted.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-23

1 November 1966.

STANDARD

for

SIDE MARKER DEVICES

for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements for side-marker systems to assure notice and recognition of a vehicle from the lateral positions during darkness and inclement weather.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard.
 - 2.1.1 *Society of Automotive Engineers (SAE)*:
J592, Clearance, Side Marker, Identification and Parking Lamps.
J594, Reflex Reflectors
 - 2.1.2 Uniform Vehicle Code of the United States National Committee on Uniform Traffic Laws and Ordinances.
- 2.2 Reference to the above publications is to the latest issues, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies to:
Passenger cars
Station wagons
Light trucks up to 10,000 GVW

4. *Detail Requirements*4.1 *Device Systems*

- 4.1.1 The side-marker system shall consist of either an independent electrical system or an electrical system in combination with or utilizing head and/or tail lamps; or a reflective system; or a combination electrical and reflective system.
- 4.1.2 Side-marker devices, shall conform to the applicable requirements of Chapter 12 of the Uniform Vehicle Code of the National Committee on Uniform Traffic Laws and Ordinances.
- 4.1.3 There shall be at least two devices on each side of a vehicle. One shall be mounted on each side near the front of the vehicle and one on each side near the rear, not less than 16 inches nor more than

28 inches from the ground on an unladen vehicle. Those near the front shall be white to amber and those near the rear shall be red. The side-marker system components shall be visible under normal atmospheric conditions at any time lights are required.

- 4.1.4 Both the front and rear side marker components shall be visible to approaching vehicles from a distance of at least 600 feet to within not less than 100 feet from the marked vehicle. Within this 600- to 100-foot range, the components shall be visible from all positions on each side, beginning at the points where the headlights can just be seen and continuing to the points where the taillights can just be seen.

- 4.2 *Electrical Side-Marker Devices*—Electrical side-marker devices shall be steady-burning simultaneously with the headlights, taillights and parking lights. Photometric measurements shall be in accordance with Section J and Table 1 of SAE J592, and as a minimum shall include test points encompassing the viewing angle described in 4.1.4.

- 4.3 *Reflective Side Marker Devices*—Photometric measurements for reflectors shall be in accordance with SAE J594, except that photometric measurements shall also include appropriate entrance angles encompassing the viewing angle described in 4.1.4. At entrance angles of over 20 degrees, the photometric values shall be not less than for the 20 degree value stated in SAE J594.

- 4.4 *Testing*—Tests shall be in accordance with SAE J592 and J594.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-24
STANDARD
for
ROLL BARS
for AUTOMOTIVE VEHICLES

1 November 1966.

1. *Definition*

- 1.1 This standard establishes requirements for roll bars installed on specific light trucks to afford a reasonable degree of occupant protection in a roll-over.

2. *Applicable Publications*

- 2.1 The following publications are applicable to this standard:
- 2.1.1 Canadian Government Specifications Board (CGSB) 97-GP-1, Restraining Devices and Anchorages for Automatic Vehicles
- 2.1.2 *Society of Automotive Engineers (SAE)*
J826, Manikins for Use in Defining Vehicle Seating Accommodation
J857, Roll-Over Tests Without Collision
- 2.2 Reference to the above publications is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies only to light trucks up to 10,000 lb. GVW of the utility type with open bodies and enclosures made of canvas, aluminum and fiberglass.

4. *Detail Requirements*

4.1 *Construction and Characteristics*

- 4.1.1 The roll bar shall be designed for each manufacturer's product to establish the width, height, clearances, and proper strengths of the structural members required. The roll bar shall be constructed to guard the operator and passenger compartment, or compartments, within a rigidly attached structural bar unit assembly. The strength and size shall be as required for each vehicle type and weight with the specified number of occupants for which the vehicle is designed to be used, and for their maximum protection, without critical deformation or critical encroachment on the operator or passenger compartments.
- 4.1.2 To the extent practicable, the roll-bar structure shall be located to preclude contact by the head of occupants wearing 97-GP-1 Type 1

seatbelts. If this is not possible, the roll bars shall be covered with energy-absorbing cushioning material at least 0.5 inch thick. The roll-bar structure designs shall not impair the vehicle operator's vision or body movements while he is operating the vehicle.

- 4.1.3 Unless otherwise specified, vehicle manufacturers may eliminate a fold-down windshield on the utility truck and incorporate a newly designed fixed windshield strengthened to become part of a roll-bar structure.
- 4.2 *Testing*—Testing shall be in accordance with SAE J857 using the ground level roll-over and the ramp method at a speed of 50 miles per hour. After roll-over, a three-dimensional manikin as specified in SAE J826, with the head probe set at 33 inches above the "H" point, and all adjustable seats in extreme forward-driving position, shall be used to gauge any encroachment. There shall be no encroachment within the 33-inch established height for any designed seating position.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-25

1 November 1966.

STANDARD

for

FUEL TANKS AND TANK FILLER-PIPES

for AUTOMOTIVE VEHICLES

1. Definition

- 1.1 This standard establishes requirements for the integrity and security of fuel tanks and tank filler-pipes in automotive vehicles.

2. Applicable Publications

- 2.1 The following publication is applicable to this Standard.
 - 2.1.1 *Society of Automotive Engineers (SAE)*
J850, Barrier Collision Tests
- 2.2 Reference to the above publication is to the latest issue, unless otherwise specified.

3. Applicability

- 3.1 This standard applies to:
 - Passenger cars
 - Station wagons
 - Buses and school buses
 - All standard commercial trucks

4. Detail Requirements

- 4.1 *Construction and Installation*
 - 4.1.1 Fuel tanks and tank filler-pipes shall be constructed and installed in such a manner as to insure against rupture, total displacement, or discharge of fuel at a rate greater than one ounce per minute, when tested as specified in 4.2.
- 4.2 *Test Procedures*
 - 4.2.1 A front-end longitudinal barrier collision test at 30 miles per hour shall be conducted as specified in SAE J850, with the fuel tank filled to rated capacity.
 - 4.2.2 Rear-end and side collision tests, directed at the centerline of the fuel tank, filled to rated capacity, shall be made using a moving barrier device weighing not less than 4,000 pounds, propelled at 20 miles per hour for a rear-end collision test, and 15 miles per hour for a side collision test on each side of the vehicle.

- 4.2.3 Other testing methods proven to give results equivalent to the SAE J850 test and the moving barrier test may be used.

5. Notes

- 5.1 The publications listed in Section 2 are available from the CGSB Secretary.

Correspondence regarding this Standard should be addressed to Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-26

1 November 1966.

STANDARD

for

OUTSIDE ORNAMENTATION, ACCESSORIES AND PROTRUSIONS
ON AUTOMOTIVE VEHICLES1. *Definition*

This standard establishes the characteristics of protrusions, accessories or ornaments on automotive vehicles that are likely to cause injury by accidental contact with other road users.

2. *Applicable Publications*

Nil

3. *Applicability*

This standard applies to:

Passenger cars

Station wagons

Light trucks up to 10,000 lb. GVW.

4. *Detail Requirements*4.1 *Essential Parts*

4.1.1 Outside rearview mirrors, stands and fastening devices shall not have sharp edges or angles pointing towards the front of the vehicle and shall not present dangerous areas that increase the risk of bodily injury in the case of impact.

4.1.2 Bumper ends shall be bent to the vehicle body and shall not be fitted with pointed protruding parts that constitute risk of injury upon impact.

4.1.3 Outer door handles shall be constructed or recessed to avoid the risk of grazing and injuring other road users.

4.1.4 Outside radio aerials shall be designed to break away on impact.

4.2 *Nonessential Parts*

4.2.1 Visors projecting over the headlights shall have a radius of curvature not less than 0.10 inch or 1/10 of the amount of projection beyond the vertical tangent to the plane of the headlight, whichever is greater.

4.2.2 "Wing indicators" and "flag stands" on the front fenders, as well as fly or snow screens and stands mounted on the hood, must be made of light material and shall be flexible or fitted on springs.

- 4.2.3 Luggage carriers and ski carriers installed on roofs of cars shall have no sharp or sharp-pointed edges.
- 4.2.4 Ornaments or parts mounted on the front end of the vehicle body shall not have sharp angles or dangerous protrusions.
- 4.2.5 Pointed ornamental parts shall not be mounted on the front and rear fenders.
- 4.2.6 No ornamental or other parts shall be mounted less than 6.25 feet above ground level if they are of such a nature that they increase the risk of bodily injury in the case of impact with other road users.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

97-GP-27

1 November 1966.

STANDARD

for

REAR LUGGAGE COMPARTMENT BARRIER
for AUTOMOTIVE VEHICLES

1. *Definition*

- 1.1 This standard establishes requirements to ensure the presence of a protective barrier between the trunk and the rear of the passenger compartment, to prevent the intrusion of articles of automotive hardware and luggage into the passenger compartment.

2. *Applicable Publications*

- 2.1 The following publication is applicable to this standard:
 - 2.1.1 *Society of Automotive Engineers (SAE)*
J850, Barrier Collision Test.
- 2.2 Reference to the above publication is to the latest issue, unless otherwise specified.

3. *Applicability*

- 3.1 This standard applies only to passenger cars.

4. *Detail Requirements*

- 4.1 A transverse diaphragm shall be constructed between the back seat and the trunk to prevent penetration into the rear seat area of items likely to be in the trunk, such as luggage, tools, etc., when the vehicle is subjected to barrier impact.
- 4.2 The barrier impact test shall be made at 30 miles per hour in accordance with SAE J850.

5. *Notes*

- 5.1 The publication listed in Section 2 is available from the CGSB Secretary.

Correspondence regarding this standard should be addressed to the Secretary, Canadian Government Specifications Board, c/o Department of Defence Production, Ottawa 4, Canada.

APPENDIX '6'

DRAFT COPY ONLY OF
Canadian Government Specifications Board

GUIDE TO TRAFFIC SAFETY

Part I—The Human Factor

Part II—The Vehicle

Part III—The Environment

(for index to Part II see this Appendix, end of Part II, subappendix (i))

GUIDE TO TRAFFIC SAFETY

PART I

THE HUMAN FACTOR

1. *Objective*

The objective of this section of the Guide to Traffic Safety is to give the best available information for the identification and control of human factors that impair driving ability.

2. *Introduction*

- 2.1 The human element is the most complex, the most variable and the most difficult to control of the interacting triad of human, mechanical and environmental factors involved in vehicular traffic. It is the consensus of informed authorities that human factors are responsible for by far the greater percentage of all traffic accidents. Unfortunately, little reliable data have been obtained to accurately define the magnitude of various human factors in accident causation.
- 2.2 There are few proven cut-off points or criteria to define fitness to drive, and few controlled studies have been carried out to indicate whether groups of drivers with any particular disease have higher accident rates than otherwise comparable groups.
- 2.3 Notwithstanding the deficiencies in our knowledge of the exact involvement of the human element in traffic accident causation, it cannot be overstressed that full responsibility for the control of the vehicle rests with the driver. He cannot reasonably expect that improvement in vehicle and highway design and construction will relieve him of this responsibility. When any of the factors affecting the driving task—the highway, weather conditions, the vehicle or his own physical or mental condition are less than optimum,—it must remain the responsibility of the driver to adapt his driving to these conditions.

3. *The Driving Task*

- 3.1 There are a series of separate, yet related problems within the framework of the driving task. Vision is a most prominent factor within this framework. In order to drive safely the driver must see what is ahead of him, beside him and behind him. He must understand what he sees, decide on what he will do depending on what he sees and understands, then carry out his decision. This same model refers to other senses such as hearing and touch although they are of lesser importance. The entire series of events may happen in a split second.
- 3.2 The driving task is complicated even more by the interrelationship of these component parts and the constantly changing set of conditions, both external and internal.

- 3.3 Certain deficiencies may exist in individual drivers in relation to these separate elements. They may stem from known medical impairments or from acquired impairments such as the ingestion of alcohol, or from under-developed capabilities resulting from lack of proper training. Many such factors may be anticipated and corrected by the driver.

4. *Accomplishment of the Driving Task*

- 4.1 To accomplish this task and carry out his responsibilities to himself, his passengers and others who may be in his sphere of responsibility, the driver requires an adequate measure of JUDGMENT and SKILL. These essential assets vary from driver to driver, and from time to time may vary in any one driver.
- 4.2 JUDGMENT is a combination of intelligence and experience. Normally it increases with exposure to varying traffic situations.
- 4.3 SKILL is gained from a combination of ability and training, and normally increases with additional driver education, formal or informal.
- 4.4 Although there is a minimum requirement for each of these talents, a reduction in one may be compensated for by an increase in the other. Within limits, advancing age is a good example: it may bring a deterioration in driving skill and reaction time that can be counterbalanced by improved judgment.

Ideally, judgment and skill are developed through an orderly progression:

- (a) an initial period of driver education
- (b) qualification by means of a driver test
- (c) driver improvement training to ensure continuing acceptable performance.

The ultimate demand on a driver's judgment and skill arises in an emergency. Fortunately, drivers are not frequently required to call upon their total resources, since critical situations are uncommon in normal vehicle operation. When these situations do arise, however, and demand more judgment and skill than the driver possesses, the result invariably is accident involvement.

5. *Medical Limitations*

- 5.1 Among the many causes contributing to automobile-inflicted injuries and deaths, medical limitations are recognized as a factor. If alcohol is included as a medical problem, it becomes the most significant factor in driver-produced casualties.
- 5.1.2 In many areas, controlled studies with large groups of drivers are not available. Further research is urgently needed. Pending clarification the following paragraphs set out provisional guides which are certain to be refined with the accumulation of further medical knowledge and statistical data.

5.2 Vision

Visual function is extremely complex and depends not only upon the capability and clarity of seeing but also upon the interpretation of what is seen. Capability and clarity are measurable quantities and reasonable minimal standards of those functions can be suggested. Interpretation is not easily measured but is commonly assumed to be reasonably adequate.

5.2.1 Visual Acuity

Visual acuity is measured in terms of ability to clearly distinguish form at various distances. Using standard Snellen eye charts, normal vision includes the ability to clearly distinguish increasingly larger letters from a specific minimal size up to a specific larger size at a distance of 20 feet.

5.2.2 20/20 vision means the individual can clearly distinguish the letters on the 20 line of the eye chart at a distance of 20 feet. (He may even be able to read some letters of smaller size.) Such an individual should be able to clearly distinguish letters on the 200 foot line of the chart at a distance of 200 feet.

5.2.3 The size of the letters and numerals on Ontario motor vehicle plates corresponds approximately to the size of the letters on the 100 foot line of the Snellen charts. Accordingly, if those letters and numerals can be clearly distinguished at a distance of 100 feet the observer likely has normal vision (20/20 or better). If an observer must be 40 feet or closer to clearly distinguish the letters and numerals his vision is likely to be 20/40 or less.

5.2.4 In private passenger vehicle operation, with or without glasses, visual acuity not less than 20/40 in the better eye is desirable.

5.2.5 With or without glasses, visual acuity not less than R. 20/30, L. 20/30 is recommended for commercial passenger vehicle drivers.

5.2.6 If vision with glasses is less than 20/20 in one eye, that eye is considered useless in the driving task.

5.2.7 Drivers with sight in only one eye, should have vision, with or without glasses, not less than 20/30 in the functional eye and should be required to demonstrate proficiency adequate to the driving task.

5.2.8 It is well known that visual acuity and night visual capacity decrease with advancing age. Cognizance of these facts should be taken, in assessing elderly drivers.

5.3 Visual Fields

It is recognized that a good field of vision is of particular importance in avoiding intersection collisions. Drivers, especially persons with corrected acuity at the lower limits of acceptability, should have visual fields not less than 110°. Individuals with markedly constricted fields should not drive.

5.3.1 Eye Muscle Balance

Any person with eye muscle imbalance or squint of sufficient severity to cause uncontrolled continuous or frequently recurrent double vision cannot drive safely.

5.3.2 *Color Blindness*

Defective color perception is not an important driving hazard since traffic lights are standardized in most areas and compensation is made by attention to position of lights.

5.4 *Hearing*

- 5.4.1 Deafness is acknowledged to constitute a relatively slight hazard in private vehicle operation since compensation can usually be made by use of outside rearview mirrors and increased alertness on the part of the driver.
- 5.4.2 The unit measure of sound intensity is the decibel. Employing an Audiometer, human hearing is assessed in terms of decibels perceived at frequencies from 250 to 8,000 cycles per second. Hearing is usually considered normal if perceptive loss is no greater than 20 decibels throughout the 250 - 8,000 c.p.s. frequency range. Roughly, with eyes closed to prevent lip reading and with each ear tested separately, an individual who cannot accurately and consistently perceive the whispered voice with each ear at a distance of 20 feet, is likely to have a bilateral hearing loss in excess of 20 decibels.
- 5.4.3 Persons with a hearing loss greater than 30 decibels in either ear for the frequencies 500 - 1000 - 2000 cannot drive a passenger bus or taxicab safely, because the increased difficulty in talking with passengers in a noisy environment is likely to prove a distracting influence. The use of hearing aids has not proved to be practical in the case of passenger-bus drivers.
- 5.4.4 Anyone who is subject to attacks of sudden dizziness without warning due to disease of the inner ear should not drive until such attacks are fully controlled by treatment. Persons with this type of disability should not drive commercially.

5.5 *Heart Diseases*

- 5.5.1 A recent study¹ has shown that persons suffering diseases of the heart and blood vessels average twice as many accidents per million miles of driving as drivers in the comparison group on an age-adjusted basis. Most types of heart disease do not constitute a limitation for the operation of private motor vehicles if they are adequately controlled by treatment, but they are limiting factors in commercial driving.
- 5.5.2 Coronary thrombosis is one of the most frequent distabilities suffered by persons more than fifty years old. Following adequate rehabilitation, a person may drive a private vehicle, but commercial driving is precluded. The symptom of Angina pectoris, a chest pain commonly associated with this type of illness, should preclude driving heavy commercial vehicles as the exertion involved may precipitate the pain and result in distraction from the task. Angina Pectoris need not preclude private passenger vehicle operation unless attacks are frequent and unresponsive to therapy. If pain is precipitated by slight emotional upset or by the effort of manœuvring a car in heavy traffic, it constitutes an absolute contra-indication to driving.

5.5.3 High blood pressure controlled by treatment need not limit driving. Complications such as damage to heart, brain or eyes must be individually evaluated.

5.5.4 Various other disorders such as congenital and rheumatic heart disease may cause heart failure and merit careful medical assessment. Generalized hardening of the arteries creates progressive increase in reaction time and may constitute driver limitation at any time according to the judgment of the examining physician. A number of persons with disturbances in heart-beat rhythm are now fitted with artificial pacemakers. Such patients must be evaluated on an individual basis and reassessed at least annually. As yet there is no body of evidence on which to base a sound decision as to the ability of such persons to drive safely. Until further experience has accumulated, it is considered that persons with pacemakers can drive a private motor vehicle if they are receiving medical attention. They should not drive passenger transports or commercial vehicles.

5.6 *Diabetes*

A patient with diabetes fully controlled by diet, with or without oral medication, can drive safely. If on insulin, he should be aware of the danger of low blood sugar reactions. Persons requiring insulin to control diabetes should not drive passenger transport or heavy commercial vehicles.

5.7 *Diseases of the respiratory system*

Few conditions of the nose, throat and lungs normally interfere with driving. Persons with disorders that interfere with speech or breathing should not operate a commercial vehicle. Any patients with a permanent tracheotomy, however, probably should not drive because of the possibility of sudden obstruction.

5.8 *Diseases of the nervous system*

5.8.1 *Mental Diseases*

When a patient is discharged from a mental hospital or if under psychiatric care, he should receive his physician's advice on his capability to drive. This advice should also be conveyed to a responsible relative. Any person receiving sedatives, tranquilizers or psycho-energizing drugs must be cautioned against or prohibited from driving, depending on the severity of the case and the dosage administered. The doctor's advice on possible effects of drugs should also be followed.

5.8.2 *Mental Deficiency*

No one with an intelligence quotient of less than 70 should ever operate a motor vehicle. Those with an I.Q. of 70 to 80 are more susceptible to accidents than normal individuals when faced with emergency situations requiring accurate judgment or decisive action.

5.8.3 *Epilepsy*

Persons suffering from epilepsy should not drive until they have been free from seizures for at least two years and provided they have no undesirable side effects from their medication. They

should not drive commercial vehicles. Alcoholic beverages should not be consumed for at least 24 hours before driving. Prolonged periods of driving should be avoided since fatigue may produce an attack. The emotional strain of driving in heavy traffic and the stimulation of opposing headlights when driving at night may precipitate a seizure.

5.8.4 *Narcolepsy*

This is a rare disorder characterized by recurrent episodes of irresistible drowsiness or sleep which preclude maintenance of a healthy degree of alertness. The episodes vary from periods of a few moments of decreased alertness to prolonged periods of sleep. Narcoleptics may suddenly drop off to sleep during the course of conversation, while eating a meal, or while driving, etc. Although narcolepsy may be severe, moderate or mild, it presents a great potential hazard in any form if the person must drive. Those affected should not drive, or should restrict their driving when they are not alert. With plenty of sleep and proper use of drugs under a physician's guidance, such persons can achieve a normal degree of alertness and become safe drivers.

5.8.5 *Disorders Affecting Muscular Control or Co-ordination*

A wide variety of illnesses affect the nervous system, each posing a special problem with respect to driving ability. Included in this group are such conditions as polio, muscular dystrophy and multiple sclerosis. The more serious disorders generally cause either rapid deterioration or sufficient functional disability that individuals will cease to drive by their own volition. In slowly progressive cases, it is the physician's responsibility to recommend to the patient that he discontinue driving when the disability becomes recognizable as a hazard to the driving task.

5.9 *Disease of the Muscles and Skeleton*

- 5.9.1 Defects that impair driving ability should be evaluated by the person in charge of driving tests for the licensing authorities. If special devices are necessary, drivers should demonstrate their capability to use them.
- 5.9.2 Physicians can advise on driving when patients suffer temporary disabilities, particularly persons wearing casts or braces. No attempt should be made to drive unless full control of the vehicle is certain.

5.10 *Alcohol*

- 5.10.1 Safe driving and ingestion of alcohol are incompatible. There is now ample evidence that approximately one-half of crashes fatal to vehicle occupants, and one-fifth of crashes in which vehicle occupants suffer non fatal injury, result at least in part from the effect of alcohol. A classic study⁽⁹⁾ has established that blood alcohol levels over 40 mg. per cent or 0.04 per cent by weight, are definitely associated with an increased accident involvement. The probability of accident involvement increases rapidly at alcohol levels over 0.08 per cent and becomes extremely high at levels above 0.15 per cent.

When drivers with blood alcohol levels exceeding 0.08 per cent have accidents, they tend to have more single vehicle accidents and more severe accidents in terms of injury and damage, than comparable similar sober drivers.

- 5.10.2 For most persons, impairment begins at a blood alcohol level as low as 0.03 per cent, which is usually reached after one or two drinks. At this point people develop a false sense of well-being. They are the last to realize that the most highly developed functions of their brain such as intellect, perception and judgment are becoming impaired. This occurs long before the more basic functions, such as co-ordination of muscular activity are lost. Numerous studies using individuals accustomed to drinking are in agreement that two 12-ounce bottles of beer or two ounces of whisky consumed within one hour will put the average moderate drinker in the zone of 0.035 per cent blood alcohol. Three 12-ounce bottles of beer or three ounces of whisky within the same period will result in more than 0.05 per cent blood alcohol.
- 5.10.3 The average person of 150 pounds can only use up and/or eliminate enough alcohol in an hour to reduce his blood alcohol level by 0.015 per cent. This offers a clue to the length of the necessary waiting period after drinking before driving.
- 5.10.4 There is also evidence that incipient alcoholics or those with histories of problem drinking form the core of the offending groups who drink and drive with subsequent accident involvement, and that such persons frequently suffer an underlying psychiatric illness.

5.11 *Carbon Monoxide*

The adverse effect of carbon monoxide, from exhausts and from smoking, on driving ability is in decreasing the visual sensitivity of the eye in areas of low illumination. The relative oxygen deficiency from smoking three cigarettes is equal to that of traveling at a 7,500 foot altitude. Since adequate ventilation does not take care of chain smokers who inhale, drivers should refrain from frequent smoking prior to and during periods of driving or at high altitudes particularly at night. The danger of high carbon monoxide levels in inadequately ventilated vehicles should be emphasized and great caution advised.

5.12 *Drugs*

Many prescription and over-the-counter drugs can affect judgment and behaviour either favourably or unfavourably. There is, however, little scientific evidence concerning the extent to which individual classes of drugs contribute either to the prevention or causation of highway accidents. Research in this area is urgently required. Limited studies have shown that less than half of one per cent of drivers found to be impaired were under the influence of drugs other than alcohol. The great quantity of sedative and stimulant tablets marketed through illicit channels constitutes a potential hazard. Physicians administering drugs likely to impair sensory, mental or physical functions have a clear responsibility to inform their patients about the unusual effect of drugs on some people and the potential effect on driving. Patients have a clear

responsibility to ask about the effects of drugs and to curtail their driving until the effect of a drug is fully appreciated. The highly dangerous additive effects of combining most commonly prescribed drugs and alcohol cannot be overemphasized and should be widely publicized.

5.12.1 *Tranquilizers*

Persons in the initial stages of dosage adjustment, especially those on large doses, may suffer drowsiness or faintness and should not drive. Patients who are stabilized and symptom-free may operate a private vehicle safely

5.12.2 *Stimulants*

The benefit of the mild stimulant effect of caffeine contained in tea and coffee is well known and enjoyed by millions. Although the more potent central nervous system stimulants such as amphetamine temporarily increase alertness and efficiency, large doses may produce headache, dizziness, agitation, irritability, hallucinations and decreased ability to concentrate. Fatigue and depression follow the initial stimulation, and these drugs should only be used on the advice of a physician.

5.12.3 *Pain-Relieving Drugs*

Narcotic drugs, such as morphine, impair driving ability by causing a false sense of well-being, inability to concentrate, apathy, dimness of vision and rapid flow of uncontrolled thought. Driving should not be undertaken while under the influence of such drugs.

5.12.4 *Antihistamines and Drugs Preventing Motion Sickness*

There is a great deal of individual difference in reaction to such drugs with dizziness or drowsiness occurring fairly frequently. Patients using such drugs should not drive until it has been established by prior trial that they do not experience dizziness or drowsiness.

6. *Psychological Aspects*

Determining psychological fitness to drive is extremely difficult since the boundary between normal behavior and abnormal behavior is hard to define even in controlled psychological experiments.

6.1 *Attitudes and Driver Education*

6.1.1 The extent to which personality deficiencies contribute to an individual's accident record is ill-defined, and this is unavoidable in view of the complexity of the factors that operate in establishing a state of mind. It has, however, been demonstrated that maladjustments in meeting the personal and social demands of living are far more frequent among accident repeaters than among accident-free groups.

6.1.2 It is well known that younger drivers are over-represented in traffic accident statistics and in consequence, the goals of traffic safety education hold great significance in Canada today. Each segment of the community has a responsibility in meeting this challenge. The initial obligation rests upon the parents, since the example they set is a powerful influence on the personality of the child. Responsibility

also rests on the school, community agency and individual. The problem resolves itself into how to help young people develop stable life-long patterns of intelligent thought, action and attitudes.

6.1.3 The essence of a good driver-training course should be two-fold:— development of *skill* in handling the vehicle and development of *judgment* in making driving decisions. With most young people the first task is by far the easier. Their reactions are fast and their physical responses are good. The development of judgment, however, is more difficult and not easily measured. Because this is so, normally it receives insufficient emphasis. An integral part of this aspect of driver-training is the attitude or the "driving conscience" of the student. In some, this too will require development. The subject is competently covered in the "Teacher's Handbook for Sportsmanlike Driving"⁽³⁾ (published under the auspices of the Canadian Automobile Association.)

6.1.4 Studies of groups of young drivers⁽⁴⁾ have demonstrated that the accident involvement of trained drivers is substantially lower than that of untrained. In consequence a good driver-education program for all young Canadians about to apply for a driver licence would be a major advance in the traffic safety program.

6.2 Accident Repeaters

Removal of the "accident repeater" from the road is a concept that has received some statistical attention in recent years. It has not, however, proved useful as a basis by which susceptible individuals may be recognized in advance of their accidents. One study⁽⁵⁾ examined the driving records of vehicle operators over two successive three-year periods. It showed that if all drivers with two or more accidents (i.e. the minimum number to permit the classification of "repeater", during the first period had been prohibited from driving during the second period, the number of accidents during the latter period would have been reduced by less than 4 per cent. Hence it appears that while accident repeaters exist, overly restrictive licensing would be required to have any appreciable effect on traffic accident frequency.

6.3 Emotional Disturbances

Many situations create temporary emotional upset in normal people. The individual may become absorbed in his problem and despondent or even antagonistic or aggressive. In all such moods persons are susceptible to accidents and should not drive while so affected.

6.4 Fatigue

Fatigued, drowsy and sleepy drivers are responsible for many accidents. They are unable to make split-second decisions, reaction time is slowed and there is a loss of peripheral vision and attention. In addition, many individuals are victims of "Highway hypnosis" or hallucinations. There are three distinct aspects of fatigue: mental, physical and skill. These three aspects are, to a degree, interdependent and not clearly separable. *Mental fatigue* is often evidenced by a decrease in concentration, dullness and heightened irritability. Boredom may be considered a

part of mental fatigue but the converse does not appear to be true. *Physical fatigue* is promoted by any form of continuous discomfort—seating position, excessive noise level, or vibration. On a long drive, fatigue levels may be lowered by changing the seating position regularly and by stopping every two or three hours. A short walk, a small amount of food, tea or coffee during each stop may also help. *Skill fatigue* is extremely difficult for the subject to recognize in himself. It is evidenced in a number of forms such as permitting greater deviations before corrective action is taken, followed by over-correction. Most insidious of all is the belief on the part of the individual that his skill performance has not deteriorated.

Simplification of the driving task will delay the onset of all three aspects of fatigue and would make a significant contribution to traffic safety.

6.5 Driver Distraction

The complexities of the highway environment in today's driving of a motor vehicle places considerable demands on the drivers' perceptual and visual capabilities which necessitates the elimination of distraction, wherever possible. To assist the driver, efforts are being made to reduce the reflectance from windshield wipers, interior objects and construction to eliminate distractive reflection in these areas. Improvement in the uniformity of road signing, marking and use of reflective materials is continually being explored and evaluated so that the driver will be able to perceive a clear message of intent immediately. The driver can also be distracted by circumstances and events taking place within the vehicle. Insects for example can create a hostile atmosphere such as the invasion of the vehicle interior by a wasp which can create serious distraction and should be eliminated by selecting as quickly as possible a safe location to stop the vehicle. The attention of the driver can be distracted and aggravated by unnecessary passenger activity, particularly on the part of young children, high interior noise levels, etc. Normally these circumstances are controllable and can be eliminated.

7. Motorcycles

7.1 In both Canada and the United States motorcycling has become increasingly popular during the past decade. Motorcycle sales, motorcycle traffic, motorcycle accidents and motorcycle fatalities have all increased appreciably.

7.2 Statistics

Available statistics indicate that age groups 15 to 29 are most frequently involved. Collisions with other vehicles account for approximately 62 per cent of accidents while non-collision traffic accidents add another 32 per cent. In Canada 1807 motorcyclists or passengers were injured while 34 were killed during 1964: the majority occurring in the period April through September (six months).

7.3 Casual factors

Accumulated evidence strongly suggests that motorcycle riders are killed and injured because:

- (1) many riders lack adequate training and experience in controlling their vehicle;
- (2) riders are inadequately informed of the inherent dangers of motorcycling and are unprepared to cope with hazardous traffic situations; pedestrians and other vehicle operators are not prepared properly to recognize, accept and assist in the resolution of traffic problems created by the presence of motorcyclists in the milieu.

7.4 Personal protection

Human factors are undoubtedly of major importance in motorcycle accidents and all that has been said about the driver of other vehicles is applicable to the motorcyclist. In addition specific attention should be directed towards peculiarities of motorcycling which dictate necessity for specialized personal accoutrements such as crash helmets, goggles, face shields and protective clothing including footwear.

7.5 Crash Helmets

Most of the fatal accidents and many of the non-fatal accidents involve injury to the head and neck. Most of morbidity and mortality could be avoided by the simple expedient of wearing an approved motorcycle crash helmet. Research⁸ has shown that the use of helmets reduced the risk of head injury by 33 per cent and death by 40 per cent.

Bicyclists

During the year 1965, 88 Canadians lost their lives while riding a bicycle. Numerically, this does not make the bicyclist a major factor in the annual traffic accident toll. However two aspects of this situation magnify its importance:

- (1) The majority of the victims were young people and the consequent loss of life expectancy was relatively high.
- (2) The bicycle is a vehicle which should be operated according to normal traffic laws. Hence, invariably it is the bicyclist's first experience in operating a legal vehicle in traffic. This fact underlines the necessity for adequate training in the rules of the road and the development of a good driving attitude.

On their part, many vehicle operators fail to consider a bicycle as another vehicle. This too is an underlying cause of bicycle accidents.

Pedestrians

- 9.1 Currently in Canada, one pedestrian is killed for every three fatalities in motor vehicles; one pedestrian is injured for every six persons injured in motor vehicles. As might be expected the pedestrian toll is much higher in urban areas. For example, in Metropolitan Toronto in 1965, 63 pedestrians were killed as compared to 57 motor vehicle occupants.

- 9.1.1 The most cursory examination of this situation immediately reveal certain similarities and dis-similarities in the victims of motor vehicle and pedestrian accidents. The following table sets out the data as they relate to age:

TRAFFIC FATALITIES IN CANADA—1964*

Age Group	Pedestrians	M.V. Occupants
0-14	250 (36%)	93 (8%)
15-64	248 (36%)	952 (79%)
65-Over	189 (28%)	157 (13%)

*Province of Quebec breakdown not available.

When these figures are considered in relation to the populations at risk in the various age groups it is obvious that the very young and the elderly are much more susceptible to pedestrian accidents.

- 9.1.2 Existing studies in this field indicate that in the lower age groups unsettled family environment and inadequate safety training both in the home and school are major contributing factors.⁶ In the older age group, alcohol has been shown to be a significant factor.⁷ Carelessness or inattention on the part of the driver is evident in many cases where he is blameworthy.

9.2 Factors

There are many factors which complicate any program to decrease the number of pedestrian accidents. Basically there is the problem of age—as soon as an individual can walk and as long as he can walk, he can become involved in a pedestrian traffic accident. Further, the measure of control now exercised by means of driver licensing, is not available in the case of pedestrians.

- 9.2.1 Nevertheless, the gravity of this problem calls for energetic action in an effort to lessen the toll of death and injury to pedestrians. Improvement in this area insofar as pedestrian responsibility is concerned can best be effected by:

- (1) Education of the young in the home and in schools.
- (2) Continuing education of the public by safety and community organizations.
- (3) Thoughtful legislation and control of pedestrians, particularly in urban areas.
- (4) Design of roadways and walks to separate the pedestrian from the vehicle environment as much as possible.

10. Indications for Medical Examinations

A medical examination is indicated under the following circumstances:

- (a) Following accidents in which the driver or investigator believes contributing medical factors such as loss of consciousness, failure to see collision objects, etc., were involved.
- (b) The presence of gross physical impairments at the time of application for, or renewal of a driver's licence.

(c) As recommended by staff physician reports at the time of discharge from mental institutions.

(d) On the basis of previous examinations that have revealed medical limitations.

(e) Following multiple accidents or multiple offenses.

(f) School health reports reviewed at the time of enrollment in driver-training classes.

Age itself is not necessarily a driver limitation. Medical evidence clearly indicates certain progressive impairments that accompany the aging process, ultimately leading to pathological deviations from the normal. Therefore, driver fitness should be based on functional capacities rather than age per se.

11. Human Engineering

The term "Human Engineering" is relatively new, having come into general use during the second world war. It was applied to the cockpit design of aircraft and based on the concept that the machine is a functional extension of the human operator.

A number of advantages can be expected by application of this concept:

- less physical and mental effort is required
- less training is required
- operation will not present ambiguities or conflict with established habits.
- automatic reaction to an emergency is more likely to be the correct one

Thus, the primary objective of this concept is to design "man-machine systems" which in normal use will operate with maximum effectiveness and minimum error.

There are many examples of the advantages of applying the principles of human engineering to automobile design. The horn switch is a simple one. Frequently the horn is blown as a warning when an emergency situation appears to be developing and time is critical. With most drivers this becomes an automatic reaction and if the location of the switch is inconvenient or unfamiliar, delay and distraction of the driver is the result.

The gear selection pattern of an automatic transmission is a case where good human engineering is now being demonstrated.

Standardization of design is an important factor in human engineering. Here, however, we must be prepared to accept some degree of compromise since, over a period of time, complete standardization would rule out improvement. In consequence, the value of a technical advance should be weighted against its non standard operation (if such is required) before an alteration is made to an existing arrangement.

In general, than, it may be said that application of the known principles of human engineering make accident-free accomplishment of the driving task easier for the vehicle operator. When the complexity of that task is examined, this becomes a worthwhile objective.

GUIDE TO TRAFFIC SAFETY

PART II—THE VEHICLE

TABLE OF CONTENTS

Section

- 1 Introduction
 - 2 Design for Prevention of Accidents
 - 3 Inspection and Maintenance
 - 4 Design for Prevention of Injury
- Subappendix (i)—Index to Part II and Standards.

AUTOMOTIVE VEHICLE SAFETY CODE

PART II—THE VEHICLE

1. Introduction

- 1.1 PURPOSE—The purpose of this part of the Guide is to discuss in nontechnical terms those features of vehicles that affect their safe operation. It should be understood when examining this part of the Guide that research into the cause of accidents is continuing on a wide range of subjects and there are still many unknowns in the total picture of vehicle accidents. The general comments and remarks in the following sections give some indication of the problem areas and possible corrective action, although subsequent research may develop alternative solutions not covered in this section.

This part makes reference to standards for a number of safety features that are now, or will shortly be available as regular components or optional accessories. These standards are similar to those developed by the General Services Administration in the United States and were prepared in consultation with automotive engineers, medical associations, safety organizations and government agencies.

1.2 DEFINITIONS

- 1.2.1 *Automotive Vehicle*—In general, any vehicle that is self-propelled or driven by mechanical power and designed for use on highways. Military tactical, combat and training vehicles, motorcycles, special purpose delivery vehicles, trailers and trucks over 10,000 lb. pound gross vehicle weight, however, not generally included in the standards at this time.
- 1.2.2 *Safe Vehicle*—A "safe vehicle" in the true sense is an abstraction; however, a relatively safe vehicle is one that because of its design is unlikely to be involved in an accident when properly driven, but in the event of an accident it will protect its occupants, minimize injury to pedestrians and other road users, and retain all these characteristics throughout its life with adequate maintenance.

2. Design for Prevention of Accidents

Since the most desirable way to prevent injuries is to prevent accidents, vehicle features that reduce the likelihood of accidents are of prime importance.

- 2.1 STABILITY AND HANDLING—To assist in avoiding accidents the driver should be able to steer his vehicle quickly and accurately under all road conditions, speeds and rated loads. The steering characteristics should remain relatively constant throughout changes in speed and loading; in particular, there should be no sudden change from under-steering to over-steering or vice versa, at any speed or rate of turn. Additionally the vehicle should not exhibit

radically different steering characteristics when a sudden change in road surface is encountered. Vehicle response to either control or disturbance should be within the capabilities of a driver having less than average strength. The driver's primary function is to command and guide, and be responsible for the stabilization of the vehicle even with unusual loading such as may be carried on the roof.

2.1.1 *Steering Effort and Response*—In order that a driver may be able to steer his vehicle quickly, the amount of steering-wheel motion required to produce a given degree of turn of the road wheels must be compromised with the turning effort required. For vehicles having heavy loads on the steering road wheels, these incompatible requirements may require power-assisted steering. For weaker drivers of heavier vehicles, power-steering may be essential for safety and avoidance of undue fatigue. The use of variable gear ratio power-steering systems that provide maximum of power assist at low speeds, as for parking, and a minimum assist or maximum "road feel" at highway speeds, would be advantageous to the user. Power-assisted steering systems should be designed so that in the event of power failure the steering effort required to control the vehicle is not beyond the short-term capabilities of weaker drivers.

2.1.2 *Suspension and Road Feel*—The vehicle suspension should resist over-turning moments even in severe steering manoeuvres. The steering mechanism and suspension should provide some "feed back" so that the driver can feel as well as see turning actions.

2.2 CONTROLS AND BEZELS—For a vehicle to be safe it must obviously be controllable. The essential features of all control devices are efficiency, reliability, accessibility and identifiability. All controls—accelerator, brakes, lights, wipers, washers, gear shift, door, window, heaters, etc.—must be considered. Controls and bezels must be located and mounted to minimize injury to occupants (Standard 97-GP-3.)

2.2.1 *Pedal Spacing*—The spacing between the accelerator and brake pedals is important. If these are too close, either horizontally or vertically, there is a possibility of one being applied when the other is intended, or the foot slipping off the brake onto the accelerator, or of both being depressed simultaneously. On the other hand, if the brake and accelerator are too far apart, the time required to move the foot from one to the other in an emergency will be increased, and an accident that might have been avoided may result. The wide variation in pedal spacing in vehicles suggests the desirability of human engineering studies to establish optimum spacings.

2.2.2 *Parking-Brake Controls*—The parking brake should be easy to apply and release, at the same time it should be equipped with a "BRAKE ON" warning device and be secure against accidental release. It should be located so as to afford minimum hazard to occupants in an accident, and as far as practicable in a standard location with a standard method of release and application. It should be effective for restraining the vehicle against both forward and backward move-

ments. The parking brake is *NOT NORMALLY DESIGNED AS AN EMERGENCY BRAKE FOR EMERGENCY STOPPING*, but if it is claimed by the car manufacturer to be an *EMERGENCY BRAKE*, it shall be capable of bringing the vehicle to a safe stop from highway speeds. The driver's manual should provide instructions on the proper method of using the emergency brake for this purpose, and the brake mechanism should make it possible to "feather" the brakes to avoid wheel lock-up.

2.2.3 *Switches, Keys, Knobs, etc.*—Controls for lights, wipers, washers, heaters, radios, etc., should be so located that the driver need not divert his attention from the road to use them. They should also be located to present minimum hazard to occupants in an accident (97-GP-3). They should be so separated that there is a minimum possibility of confusing them, as, for example, turning off the headlights instead of the wiper. Since drivers frequently change cars, it would be desirable that there be as much standardization as feasible in the location of these controls. The possibility of coding controls by shape, symbol and mode of operation should be explored. The horn control should be so designated that it can be easily and readily actuated.

2.2.4 *Adjustability*—The driver's seat, steering wheel and foot-operated controls should be mutually adjustable so that a short driver can have an adequate field of view and reach all controls readily. Manufacturers might consider providing, as optional extras, seat blocks and pedal extensions for the small proportion of the population for which the range of adjustment in cars is inadequate.

2.2.5 *Standard Gear Quadrant or Shift*—Since accidents may be caused by drivers operating cars with which they are not fully familiar, it is desirable that controls for both automatic and manual transmissions be standardized (97-GP-11). It is important that the positions controlling reverse and forward motion be well separated. Installation of the transmission selector lever to the left-hand side of the steering column, away from the impact area, should be studied since its present position presents a hazard to a front seat passenger who may be propelled to the left in the event of a collision.

2.3 **BRAKES**—The design of the brake system should produce a balanced retarding force proportional to the force exerted by the driver. The force required by the driver to produce maximum retardation should be within the capabilities of all drivers and this may require some form of power or vacuum assistance. The maximum retarding force exerted by the brake system on each wheel must allow for a reasonable safety factor and degradation of performance with time. A heavy-duty brake system should be fitted when the use of a trailer without separate braking system is contemplated. When power-assisted brakes are fitted, their design should be such that in the event of power failure the effort required to bring the vehicle to a safe stop from highway speeds should not be beyond the short-term capabilities of weaker drivers. The brake system should be designed so that any change in effectiveness due to heat build-up, fade, moisture ingress, self-adjustment, etc., will not be sudden.

- 2.3.1 *Split Brakes*—With hydraulic brake systems there is a possibility of a sudden and complete loss of braking ability due to a rupture anywhere in the fluid system. It is therefore desirable that the brake system be divided into two systems so that if one is damaged, the other will continue to function and provide some braking capability (97-GP-9).
- 2.3.2 *Non-locking Brakes*—Since directional control of the vehicle is completely lost when front-wheel brakes lock, and is seriously disturbed by locking in the rear brakes, it is essential that wheel lock be controllable by the driver unless proven reliable devices that sense and prevent impending wheel lock are fitted. Such a system of braking would have particular advantages in the controlled stopping of a vehicle on ice or other slippery surfaces. These systems are now under research and development.
- 2.3.3 *Disc Brakes*—Disc brakes are claimed to provide better performance for high-speed driving, driving on mountain roads, etc., because of their increased ability to dissipate heat. They are also less likely to be adversely affected by water. Drum brakes are quite satisfactory for normal driving. The combination of front-wheel disc brakes and rear-wheel drum brakes may have some advantages.
- 2.3.4 *Front and Rear Distribution*—Due to the weight distribution of the average car and the shift of weight that occurs on braking, the front-wheel brakes are required to do more than half of the stopping. Unless the brake system is provided with valving, or other such inherent design characteristics, it will be easy to lock the back brakes while the front wheels are still turning. To achieve the most rapid controlled stops, the brake system should be so designed as to counteract this tendency by considering a method of metering and/or brake proportioning to keep braking forces proportional to the load carried on each axle whether the vehicle is laden or unladen.
- 2.3.5 *Self-Adjustment*—Brake systems should have a built-in self-adjustment feature, or slack adjustment system, so that brakes constantly act with optimum efficiency. A means of warning the driver when the brake linings have worn to the danger point is required.

2.4 POWER PLANT

- 2.4.1 *Power-Weight Ratio*—A sufficiently high power-weight ratio is essential to permit a driver to extricate himself safely from some driving hazards. Any ratio very much under the average can be dangerous. It may also be hazardous to have an excessive power-weight ratio since this is frequently an incentive to drive too fast for the driver's skill and the highway conditions, and can lead to skidding when starting on slippery pavements.
- 2.4.2 *Sticking Accelerators, Brake Controls, Clutch Controls Etc.*—The accelerator and its linkages, and all other speed-control devices, should not be affected by weather, temperature or invasion by road dirt, mud, slush, etc. The accelerator system should be such that in the event of the failure of any part of the linkage, the engine is

automatically throttled back to at least a point where the vehicle can be brought to a stop safely by use of the brakes. The brake and clutch linkages and controls should not be affected by weather or invasion by road dirt, mud, slush, etc.

- 2.4.3 *Stalling*—The engine, the carburetor and the electrical system should be resistant to moisture, icing and other conditions that might cause sudden stalling.

2.5 VISION—Vision is the one common denominator of all three elements of safe driving; the vehicle, the environment, the operator. Though vision factors are infrequently the detectable cause of accidents, they undeniably play an important role in driving. Vision informs the driver about the road conditions, signs and markings, and about what the driver ahead or behind is doing or intends to do. Poor vision may cause a driver to hesitate unnecessarily or to make dangerous manoeuvres. Visual failures occur when demands on the driver are beyond the limitations of normal vision. This may be caused by poor eyesight, dirty glass, glare, defective headlights or by parts of the automobile (such as reflected surfaces, corner posts, etc.) interfering with the vision. Vision has not received the necessary attention in the field of highway and automotive engineering safety. The vehicles and highways of the future must be designed within the visual and perceptual capabilities of drivers.

- 2.5.1 *Glare*—The vision of a driver can be suddenly impaired by glare as, for instance, by improperly adjusted headlights of an oncoming car, or in daytime when driving from a dimly illuminated tunnel or garage into a sunlit street. Glare may also originate with highly reflective objects such as the hood, windshield and wiper arms in the driver's field of view. Glare reduces the driver's ability to distinguish details. Resistance to glare (that is, the ability to retain some vision regardless of the presence of glare) varies from person to person. It is reduced by age, carbon-monoxide from leaky exhausts, smoking, alcohol, fatigue and high altitude. During the day glare can be reduced by sun glasses and visors. At night the effects of glare may be reduced by the driver looking to one side to increase the glare angle. 97-GP-13 refers to glare-producing surfaces of the vehicle.

- 2.5.2 *Washers*—Dust, mud, salt and insects on the windshield decrease vision and increase light glare. It is therefore essential to keep windshields clean at all times. Windshield washers (97-GP-12) aid greatly in keeping the wiped portion of the outer surface clean and should be used whenever there is any appreciable accumulation of dirt on the surface. Inside surfaces also become dirty, particularly where defrosters are used frequently or where the occupants smoke. This dirt is less obvious but it may significantly reduce visibility and increase headlight glare. The inside surfaces of all windows should be cleaned frequently.

- 2.5.3 *Wipers*—For driving in rain, fog and snow, efficient wipers are obviously essential. Wipers should cover as much as possible of the windshield, including the center portion and the part between the driver's eye and the outside rear-view mirrors, if these are mounted on the fenders. Variable-speed wipers are desirable since there

should be adequate wiper capacity to handle downpours; but the wipers should be capable of going sufficiently slowly that they do not abrade the windshield unnecessarily in mist or light rain. Wiper blades should be cleaned or changed frequently to reduce the possibility of scratching the windshield. In the parked position the wiper blades should be flush with the bottom of the windshield and out of the driver's field of view. The fitting of wipers on rear windows would contribute to safety, particularly when the rear window is sharply angled and may accumulate snow. If the rear window is kept reasonably free from frost, fog and snow, and an outside mirror is properly fitted and used, there will normally be adequate visibility to the rear in most circumstances.

- 2.5.4 *Defrosters*—A proper combination of ventilation, heater and defroster is required for comfort and to keep windshield free from condensation in cold weather. Most cars now have defrosters that keep a reasonable area of the windshield free from frost and fog under normal circumstances. Few, however, succeed in keeping the rear window and the side windows of the front compartment free from fog and frost under any but rather mild conditions. Rear window defrosters, and vents that blow warm air on the side windows, would contribute to safety. The fitting of frost shields is a less desirable expedient. (97-GP-17)
- 2.5.5 *Headlights*—Headlights that conform to legal requirements provide reasonably adequate visibility without causing undue discomfort and glare to oncoming drivers, but few headlight systems are operated at maximum efficiency. It has been stated that the collection of dust from one day's normal driving can reduce the efficiency of a well-engineered headlight system by 50 per cent (Connolly, SAE paper, SP279, page 63). The desirability of cleaning headlight lenses frequently is obvious. Unfortunately, even more obvious defects such as burnt-out and poorly aimed lights are all too frequent. Except for cars equipped with "load levellers," headlight aim changes with loading. The development of headlights that could readily be adjusted for load would be desirable. Drivers planning extensive night driving with heavily laden cars should have their headlights aimed with the laden vehicle. Lights should be inspected, adjusted and cleaned frequently. The desirability of fitting yellow or amber lenses on headlights has not been proven. Such lenses reduce light reflected back into the driver's eyes from fog but they also reduce the intensity of light reaching the road.
- 2.5.6 *Mirrors*—Mirrors provide the simplest way of gaining information on traffic behind the driver. Until such time as periscopes are fitted, or radar or television devices are adapted to cars to amplify the driver's vision and acuity, the driver must depend on one or more rear-view mirrors for rearward vision. The inside rear-view mirror should be readily adjustable for all seat positions and driver sizes in cars and light trucks to allow vision through practically all of the back window, which should be as large as possible. For driving in

multi-lane roads, vision at the back corners of the vehicle is desirable. This is most easily achieved by fitting one or more outside rearview mirrors, and at least two in the case of trucks, vans and cars with trailers. The mirror on the left side being obviously more important than the one on the right side. The outside mirrors should be fitted so that the driver does not have to shift his head or eyes appreciably to use them. They should also be located in a position from which they can be readily adjusted from the inside of the vehicle, or they should be fitted with an inside adjustment mechanism. All mirrors should be free from vibration and distortion (97-GP-16). Convex mirrors provide a wider field of view than plane mirrors but change the relative size of reflected objectives so that it is difficult to judge distance.

2.5.7 *Corner Visibility*—It is desirable that the driver be able to see all four corners of his vehicle to facilitate parking and passing through narrow openings. The contribution of this feature to safety may be minimal but it is probable that many cars that are driven with broken headlights, signal lights, or tail lights may have had these broken in parking maneuvers. Reference points on the front corners of the car may also be of assistance in highway driving and passing. These reference points may, however, also serve as pedestrian hazards, unless properly designed.

2.5.8 *Distractions*—No driver nor owner of a vehicle should allow visual obstructions in the form of signs, nontransparent materials, objects, etc., to be placed on windshields or windows, nor should objects be hung or attached to the interior of the vehicle to obstruct the operators clear view of the roadway or distract his attention. The inspection stickers, parking permits, etc., should be placed completely out of the vision area.

2.6 *Communication*—Effective communication between vehicles reduces the likelihood of accidents. The chief elements of communication are the size, shape and color of the vehicle, its lights, reflectors and horn. The communication devices should be clear, precise and free from any possibility of confusion. The vehicle should be so fitted that the operator can communicate his intentions to others with no ambiguity.

2.6.1 *Tail and Stop Lights*—The law requires tail, stop and licenseplate lights but allows wide latitude in their position, size, shape and brightness. A much higher degree of standardization than now exists is desirable, particularly in the relative brightness and positions of the stop and turn-signal lights. Since spacing of lights is used by drivers to estimate their distance from the vehicle ahead, the running lights on all vehicles should preferably be mounted a relatively constant distance apart. With a system using only red lights, the brightness difference between the running or tail lights and the stop lights should be great. The tail lights should be near the vehicle corners, and the turn-signal lights should not be capable of being confused with the stop light.

2.6.2 *Turn Signals*—The electric turn signal is an important communicative device that informs or warns other road users of a driver's

intention to change the direction of travel of his vehicle. Therefore, such signal systems should always provide the greatest opportunity for being seen by those drivers in the vicinity of the signaling car. Signal lights on front and rear should be spaced as far apart laterally as practical, so that the direction of a manoeuvre can be clearly understood and communicated. Visibility of front and rear signals should not be obstructed by any part of the vehicle throughout an acceptable visible angle and such signals should be mounted to give a wide-angle beam to facilitate lane change on multi-lane roads. The effectiveness of such signals can be enhanced by a standardized pattern of design, shape, location, intensity, color and size. Because of today's traffic speeds, density and required manoeuvrability, the addition of a supplementary light mount on each side of the vehicle to flash simultaneously with the turn signal lamps is highly desirable. Intervehicle communication grows more important each year and the function of the signal system becomes of increasing importance.

- 2.6.3 *Reflectorization*—The use of reflectorized shapes, conforming to national and international standards, to indicate road hazards either moving or stationary is a reliable means of communication. It is necessary to properly identify slow-moving vehicles, vehicles presenting a hazard to traffic, and vehicle licence plates, especially during the hours of dusk and darkness. The slow-moving vehicle presents both a day and night hazard to the normal traffic flow on highways. The proper mounting of a recognized slow-moving-vehicle emblem in the form of a triangle incorporating both day and night recognition is essential. The use of the internationally recognized red warning triangle to indicate vehicle breakdowns or other hazards is highly desirable. Such triangles should be part of the emergency equipment carried in each motor vehicle. The use of reflectorized licence plates provides an economical form of hazard recognition and should be encouraged. Such devices are particularly valuable in the event of an electrical failure at night. The addition of reflective strips to inner edges of doors, inside truck lids, etc., is an excellent method of providing hazard recognition and warning.
- 2.6.4 *Side-Marker Warning Devices*—Accidents have occurred, particularly at night and in fog, by the failure of the driver of an approaching automobile to recognize, in time to avoid collision, the outline of a parked or stationary automobile in the lateral position. Such conditions are exceptionally hazardous at dark intersections and on rural roads. Many automobiles are so designed that front and rear lighting is completely hidden from all lateral view. This situation can be alleviated by the use of reflective material to mark front and rear areas of automobiles, and by redesigning and relocating the electrical front and rear lighting so as to permit visibility from the sides (97-GP-23).
- 2.6.5 *Interior Vehicle Lighting*—The illumination of the instrument panel with a variable control that can be used at the discretion of the driver is the most satisfactory method. Surrounding light levels in

city driving may make is necessary to increase panel illumination, and conversely to lower panel illumination during country and highway driving to eliminate the distraction to forward vision. Illumination of ashtrays may be desirable for night driving providing the operator's forward vision is not impaired. Map lights, interior lights, vanity lights, etc. should not be used during night driving, when the vehicle is moving.

2.6.6 *Four-Way Flashers*—Serious and fatal injuries have resulted from the lack of adequate visual warning devices to designate stationary vehicles, particularly at night. To make it possible for a driver to warn other road users that his vehicle has become a hazard, the vehicle directional system should be so constructed that all signal lamps can be made to function simultaneously to warn drivers of the presence of the stationary vehicle.

2.6.7 *Back-up Lights or Rearward Warning Devices*—There are occasions when a vehicle moving in reverse can be thought by an oncoming driver to be a stationary vehicle. The installation of back-up lights will provide a reasonable and adequate warning of the driver's intention to move the vehicle in reverse, and such lights should be activated automatically when the vehicle is placed in reverse gear. The installation of an audio-warning system at the rear of a vehicle, activated either by the driver or automatically when the vehicle is placed in reverse, should be considered in the case of trucks, buses and other heavy commercial road equipment (Standard 97-GP-15).

2.6.8 *Tinted Windshields*—It may be essential on large slanted windshields to tint the upper portion to absorb the heat rays. The tinting of windshields within the driver's field of view is, however, not acceptable. Such tinting has an adverse effect on the transmittal of light, and under night and some atmospheric conditions this is seriously detrimental to the driver's vision. In addition, such tinting reduces the ability of the driver to recognize red traffic lights and other signal lights.

2.7 INSTRUMENTS AND INDICATORS—The driver should always be kept aware of the operating condition of his vehicle, by the use of instruments and indicators. Instruments essential to the control and safe operation of the car should be located immediately in front of the driver and in such a position that only a minimum of head or eye movement is required to determine any malfunction. Only the communicative function of the instrument need be incorporated in the instrument panel. This might best be accomplished by means of lights marked to indicate failure of any operating components or loss of efficiency below the acceptable safe level. Such an arrangement of instrument lights should in no way adversely affect the driver's vision.

2.7.1 *Indicators*—The indicators showing the proper functioning of turn-signal lights and high-beam headlights are important for safety. Turn-signal light indicators should be both audible and visible, and sufficiently attention-getting that the chances of siezed signals continuing to flash are minimal. They should clearly indicate when any turn signal is not functioning. High-beam lights may cause glare; the

high-beam indicator on the inside of the car should therefore be readily seen.

2.7.2 *Brake Indicator*—With the introduction of split-brake systems, the driver must be immediately warned of any failure in the operating components. These factors have been included in 97-GP-9.

2.7.3 *Speed-Warning Device and Speedometer*—In order to assist and encourage drivers to maintain posted highway speeds, an audible speed-warning device, functioning in conjunction with the speedometer so that it can be manually adjusted by the operator, would greatly assist in controlling automobile highway speeds. Present speedometers are only marginally related to safety. Consideration should be given to other means of presenting information on speed that would be more directly related to safety.

2.7.4 *Instrument Warning Lights*—Warning lights could replace instruments, and be located on the instrument panel and suitably labelled to indicate the functional failure of a component.

2.8 *TIRES*—The considerable public concern about tire quality is a recognition of the fact that tires are an extremely important part of vehicle safety.

2.8.1 *Capacity*—The vehicles be fitted with tires (97-GP-14) having sufficient load-carrying capacity to handle safely within statutory speed ranges, under conditions of curb and accessory weights, plus 150 pounds for each passenger that can be seated, plus 200 pounds for cars or 300 pounds for station wagons as a luggage allowance. If any but short and infrequent trips with higher loadings are contemplated, larger or higher-capacity tires should be fitted. A decal or plate indicating proper tire inflation, size, etc., for load carried and including information pertaining to the trailer-car combination should permanently be affixed to the automobile in a conspicuous place.

2.8.2 *Snow Tires*—Snow tires provide increased traction, and some improvement in stopping in snow, through their deeper tread pattern, losing effectiveness as the tread is worn. The thick tread causes snow tires to generate more heat in flexing, and they may therefore be unsafe for continuous high-speed driving particularly in summer, and more susceptible than regular tires to failures due to overloading.

2.8.3 *Studded Tires*—Studded tires for winter driving substantially increase traction on icy and slippery surfaces and will reduce braking distances. Tires to be equipped with studs should be carefully selected as the installation pattern is very important if proper life and effectiveness are to be obtained. The effect of studs on the pavement by a rolling wheel is apparently negligible and any damage that may occur is offset by their safety value. It is important that the use of studded tires be confined to the winter months only. Such periods will vary throughout Canada.

2.8.4 *Tire Chains*—Tire chains provide the best form of traction (when ever difficulty is encountered) in deep snow, slush or ice, as they

greatly improve the tractive effort of the vehicle and its stopping ability. Once the difficult road condition has passed, the chains should be removed. Care must be taken in mounting, as improperly and loosely fitted chains can cause damage to tires.

2.8.5 *Hydroplaning*—It is well known that wet pavements degrade braking and cornering performance, and it has been proven that tires may actually become separated from the road surface by a film of water, and “hydroplane.” When this may happen depends on the speed, inflation pressure, water depth, road surface and tread pattern. A good tread pattern may provide an adequate measure of safety on normally wet pavements, but “hydroplaning” may occur with any tire operating in large deep puddles and the hazard may be severe since the loss of traction may be almost instantaneous. The likelihood of occurrence can be reduced by replacing tires well before their tread pattern is worn off and by driving with caution on puddled roads.

2.8.6 *Maintenance*—It is probable that most accidents ascribed to tires are due to lack of proper tire maintenance. New tires of original equipment quality, properly inflated and not overloaded, are safe at all reasonable speeds. Tires from which most of the tread has been worn, that are under-inflated or over-loaded, or are otherwise abused, are dangerous. Each tire tread pattern should have a conspicuous means of warning a driver that the tire has reached the danger point in its life and should be replaced. One of the chief differences between low and high-priced tires is in the length of time they will continue to give safe service. Inflation pressures should be checked frequently with the tires cold, and adjusted to the pressures specified in the owner's instruction manual. If the vehicle is to be run at high speeds or with abnormally high loads, the inflation pressure should be increased, but not more than the amount specified in the owner's manual since steering is affected by both over and under-inflation. The owner's manual should contain an amplification of tire pressure data and tire sizes for special operating conditions with particular emphasis on the relation between tire pressure, load, speed and safety.

2.9 VENTILATION—It is important to the driver and occupants of an automobile that clean comfortable air be circulated at all times. There should always be an intake of fresh air to reduce the possibility of carbon monoxide poisoning. In heavy traffic, particularly if the air intake is low, it is well to drive with the windows open. Snow should be brushed off the air intake before starting. A positive flue-type ventilation system, that not only ensures provision of fresh air but also improves defogging and defrosting of the glazed areas, would result in increased safety and better vision, particularly in heavy traffic.

2.9.1 *Pollutants Emission Control*—With an ever-increasing vehicle population and resultant traffic density, the toxic gases emitted from engines assume more importance. Under certain circumstances some constituents of vehicle exhaust may react to form irritating smogs. Also, individual pollutants such as carbon monoxide may be of

concern to drivers in dense traffic situations or to persons living alongside heavily trafficated roadways. Although currently available exhaust emission control devices may improve the problem further research is required by health agencies or other research organizations.

2.10 BUMPERS—Bumpers as currently designed afford little collision protection. Their chief function is to protect lights against minor impacts during parking. Variation of bumper heights reduces the efficiency with which this is achieved. The presence of bumpers, standardized as to height, is therefore desirable for safety (97-GP-10).

2.11 GENERAL—In addition to the particular features discussed in sections 2.1-2.10 it is of paramount importance that the basic vehicle structure, all its accessories and their assembly be in accordance with sound engineering practice. Standards for many components and tests for the functioning of many parts are found in the Handbook of the Society of Automotive Engineers.

3. Inspection and Maintenance

3.1 The safest engineered vehicle constructed today can become a hazard and a potential menace to society and the public safety if not properly maintained. Drivers appear to be more concerned with the outward appearance of their vehicle than its mechanical reliability. They will faithfully wash and polish their vehicles but neglect to keep them in good mechanical condition by ensuring that regular and frequent safety inspections are carried out.

3.2 SAFETY INSPECTIONS BY THE OWNER

3.2.1 Tires—Tire pressures should be checked frequently and adjusted to the figures in the owner's manual; improperly inflated tires can blow. Tire treads should be examined and tires replaced well before 80 per cent of the tread pattern has disappeared; "bald" tires are much more likely to skid on wet pavements. If undue tire tread wear is noted, professional attention is needed.

3.2.2 Lights—Signal lights that do not function, missing headlights, tail lights, and stop lights all create hazards that can cause accidents. All can be checked by anyone.

3.2.3 Steering—Undue play in the steering wheel, or a tendency for the vehicle to wander or to pull to one side of the road, should be obvious to any driver and indicate the need for professional attention. In addition, uneven tire wear is a good indication of serious steering problems.

3.2.4 Exhaust Systems—Faulty exhaust systems can cause excessive carbon monoxide concentration in the vehicle interior. The owner should be able to confirm the integrity of at least the exhaust pipe, muffler and tail pipe assembly. Since deadly carbon monoxide poisoning is an ever-present hazard, any doubt on the part of the owner concerning the proper functioning of the exhaust system should be referred to an expert for inspection.

3.2.5 Driving a vehicle with the truck lid partially open so disturbs the vehicle's aerodynamics that exhaust fumes are drawn into the car interior.

3.2.6 *Windshield Washers*—It is the responsibility of the driver to service the windshield washer to ensure an adequate supply of fluid. This should be checked with each fill of fuel.

3.3 SAFETY INSPECTION BY PROFESSIONAL OR ENFORCEMENT AGENCIES—Since the average owner is not competent or equipped to do more than limited inspections as outlined in 3.2, and in any case probably will not make them, there should be compulsory inspection by a competent professional or enforcement agency at regular intervals. It is suggested that the current issue of American Standard D7-1 Motor Vehicle Inspections, be used as a basis for such inspection.

3.4 MAINTENANCE—Inspection is useless unless the faults revealed are corrected. It is therefore obvious that a car that is properly inspected and maintained will be a safer car than one that is neglected.

4. *Design for Prevention of Injury*

The most careful driver, in a properly designed and maintained vehicle may through the fault of others, be involved in an accident; in any case, a momentary lapse on the part of any driver should not be a death sentence. Though the potential for saving lives through changes in vehicle design may sometimes have been exaggerated, it is possible to design a vehicle so as to increase the chances of survival in collisions, and to minimize injuries.

4.1 ENERGY ABSORPTION—The laws of physics show that when a vehicle is brought to an abrupt stop, the occupants and all loose objects in it continue forward with the velocity at the time of impact. If vehicle structures were rigid, occupants would be subjected to very high forces even in low-velocity collisions. If a vehicle is brought to a stop over a distance, the forces on the occupants, and the forces with which occupants strike portions of the interior of the vehicle in the "second collision," are reduced. For this reason, vehicles with bumpers that distribute loads to structural members capable of deformation, vehicles in which hoods, fenders, trucks, etc., can crumple, and vehicles with thick side structures protect the occupants more than more rigid vehicles. Though it may make repairs expensive, "crumpleable" metal is one of the most efficient energy absorbers known. Similarly, interior structures that deform when impacted produce less severe injuries than more rigid structures, particularly those that fracture brittly producing sharp points and edges. For safety, vehicles should be designed to absorb as much energy as possible in both the primary and secondary collision.

4.1.1 *Bumpers*—Though, as stated in section 2.10, the chief contribution to safety of many bumper designs is the protection they afford to signal and tail lights, bumpers do contribute to energy absorption by distributing loads and involving greater amounts of sheet metal in a crash. Bumpers could be much more effective if they were mounted well beyond the car body, either retractable or permanently, on linkages designed to absorb energy. Such linkages might be hydraulic shock absorbers, crushable metal honeycomb, rigid cellular plastic,

cellular or noncellular elastomers with high hysteresis, or metal brackets having slotted controlled shear action. Bumpers might also contribute more to reducing injuries, particularly to pedestrians, if they were relatively flat or slightly convex from the front so that more collisions would be glancing blows. Bumpers that have concave portions may tend to lock vehicles together upon impact.

- 4.1.2 *Padding*—With occupants who are not ejected from the vehicle during an accident, the vast majority of injuries are caused by the occupant coming into violent contact with parts of the interior of the vehicle. As many of these parts as possible should therefore be designed to deform, thus spreading the load and reducing stresses on the part of the body that strikes them. Padding of the dash and visors is a most common example, but similar padding on the corner and door posts, the header, the roof, the backs of front seats and the arm rests would be desirable. Soft spongy padding is all but useless in any serious accident. Padding should be as thick as possible and quite firm to achieve maximum protection. In addition, the structures under the padding should, as far as practical, be designed to deform (97-GP-2).

4.2 INTEGRITY OF PASSENGER COMPARTMENT—In the mass of sometimes conflicting statistics on vehicle accidents, one fact is most clearly established; under almost all circumstances it is safer to remain in the vehicle than to be ejected or “thrown clear”. Thus the passenger compartment should be designed to remain intact in front, back and side collisions and roll-overs.

- 4.2.1 *Door Latches*—The door latches should be designed to prevent accidental release from either inside or outside. Latches and hinges should keep the doors closed even though the vehicle structure is severely racked and strained (97-GP-5).
- 4.2.2 *Roof Structure*—The roof structure should be sufficiently strong so that it does not collapse when the vehicle rolls over. For vehicles such as convertibles and possibly some hardtops, it may be necessary to fit special roll bars. Sedans having center posts may resist collapse with minor or no modifications.
- 4.2.3 *Passenger Compartment*—The passenger compartment should also resist intrusion by parts external to it. Of particular importance is the steering column. Though present designs of steering columns and steering wheels do provide some protection for the driver in low-velocity collisions, in higher-velocity collisions the column is all too frequently forced into the passenger compartment and serious injuries to the driver result (97-GP-4). A steering column designed to collapse under stress only slightly less than what can be tolerated by the human chest, and a steering wheel designed to spread and cushion the load, would be very desirable.
- 4.2.4 *Motor-mount and Firewall Design*—Consideration should be given to motor-mount and firewall designs to prevent intrusion of the engine into the driver's compartment, though the amount of collapsible space that can be gained by this is limited because of the normal rigidity of the front suspension system.

4.2.5 *Trunk Compartment Divider*—The division between the passenger car trunk and the passenger compartment should be sufficiently strong to resist penetration by jacks, tool boxes, etc., which may be projected forward when the vehicle is brought to an abrupt stop (97-GP-28). In the case of the luggage area in Station Wagons especially when the load consists of passengers and luggage consideration should be given to providing a means of securing such material by the use of webbing similar to Aircraft design.

4.3 *Interior Impact Hazards*—In addition to the hazard of hitting structural components (4.1.2), vehicle occupants may contact switches, knobs, levers, mirrors, coathooks, radio controls, door handles, etc. In general, these have relatively small areas that can cause serious penetrating and lacerating injuries. Standard 97-GP-3 lays down some requirements for their location and size, but ideal solutions are not easy. Controls cannot all be located outside the area likely to be impacted by occupants, nor can they all be recessed. The occupants, and in particular the driver, must be able to reach and manipulate controls readily even when wearing lined gloves. There would be little point in decreasing the likelihood of injuries in an accident by procedures that would increase the likelihood of an accident. Much can be done, however, to improve the design and location of controls from a safety standpoint.

4.3.1 *Rear-View Mirror*—A further hazard is the rear-view mirror. In addition to the break-away mount specified in 97-GP-16, the edges of the mirror should be shaped to reduce hazards.

4.3.2 *Seats*—Though seats must have a rigid structure, this structure should be padded, particularly on the upper portions of the backs of front seats, which are likely to be hit by rearseat occupants (97-GP-21).

4.3.3 *Door and Window Controls*—Door and window controls may be hazardous in side collisions. The possibilities of partially recessing them, shielding them by broad or energy-absorbing elbow rests and locating them in less hazardous positions have not generally been fully exploited (97-GP-18).

4.3.4 *Ash Trays*—Ash trays must be located for convenient use but they should be designed without sharp edges and corners, and to collapse inward readily if struck (97-GP-19).

4.3.5 *Under-Dash Area*—The parking brake control, heaters, and radios and other protuberances below the dash frequently have sharp rigid parts that are very likely to be struck by legs and knees in a front-end collision. More thought should be given to the design and location of these from a safety stand-point.

4.3.6 *Glove-Compartment Doors*—Although few accidents can be attributed to glove-compartment doors (especially open doors), severe injuries have occurred during impact or sudden braking. Glove-compartment doors should be designed to maximize the likelihood of the door remaining closed. Logic suggests that in the case of an accident it is better to strike the instrument panel area with the glove-compartment door closed than with it open.

4.4 RESTRAINT TO OCCUPANT—If car occupants could be prevented safely from flailing around in the “second collision”, injuries would be very greatly reduced.

4.4.1 *Restraining Devices (Seat Belts and Shoulder Harnesses)*—The majority of fatalities and serious injuries to occupants of automotive vehicles are caused by the occupants striking the interior of the vehicle (secondary collision) or by being ejected from the car. To minimize injury and fatalities, a number of methods are available for holding the occupants in their seats, and for ensuring that areas of the interior with which the occupant might come in contact are so designed as to minimize the risk of serious injuries. This can be accomplished by:

- (a) Provision of adequate door latches and hinges to reduce likelihood of ejection (Standard 97-GP-5).
- (b) Provision of restraining devices to prevent total ejection (97-GP-1).
- (c) Provision of a lap belt and shoulder harness either as separate units or combined (97-GP-1).
- (d) Designing the interior of the vehicle to minimize injuries (97-GP-2, 97-GP-3 and 97-GP-4).

Because of the limited acceptance and usage of restraining devices by the general public, the injury attenuation features designed into the present automobile should not be dependent upon their permissive use, and every effort should be made to increase their use, both through education and through making them more comfortable and convenient to wear.

4.4.2 *Lap Belts*—Lap-type seat belts are now almost universally available. When worn, they prevent complete ejection even if doors open, and they restrict the maximum forward movement of the wearer. They do save lives and reduce serious injuries, but they do not prevent the body from hinging forward to the extent that the head may strike the dash, windshield or controls, especially if the seat belt is not done up tightly. Another reason for fastening seat belts tightly is that they then transmit loads to the pelvic girdle, the strongest part of the human anatomy. When belts are worn loosely, forces may be absorbed by the abdomen and serious injuries may result (Standard 97-GP-1).

4.4.3 *Upper-Torso Restraint*—Much greater protection is obtained by the combination of lap and upper-torso restraint since this not only prevents “jack-knifing” of the body but also distributes the load over a greater area of the body (Standard 97-GP-1).

4.4.4 *Seat Belts energy absorption*—In addition to serving as restraints, seat belts also acts as energy absorbers. Their efficiency in this regard might be improved either by engineering the webbing so that it absorbs more energy in stretching or by fastening nonstretching belts to anchors designed to yield plastically.

4.4.5 *“Whiplash (Hyperextension Injuries)”*—“Whiplash” is one of the leading causes of injuries to occupants of automobiles involved in

rear-end collision, due to lack of adequate head restraint while under impact. This situation can considerably be alleviated by restricting the rearward head motion during impact by using either head supports (head rests) or seat construction that is above shoulder height. (97-GP-22). Consideration should be given to extending the application of this standard to include standard commercial trucks. Head rests may, however, restrict vision to the rear and sides; and flimsy "add-on" head supports may have inadequate strength to provide protection and may break on impact leaving jagged metal spears.

4.4.6 *Safety Helmets*—Well-designed safety helmets have proven an effective means of attenuating head injury for motorcyclists. Since the majority of automobile accidents involve injuries to the head, the wearing of protective head gear would be a considerable advantage. The design and development of an attractive, comfortable but effective head protector is worthy of consideration.

4.4.7 *Contoured Seats*—The movement of occupants in a crash can also be controlled to a considerable extent by contoured seats. Since not only comfort but safety might be enhanced by seats that provide considerable restraint to lateral movement, these warrant further study.

4.5 **RESTRAINT OF OBJECTS IN PASSENGER COMPARTMENT**—Other objects in the passenger compartment may become hazards in a collision. Since heavy objects should never be placed on the rear shelf behind the back seat, the rear shelf should be designed so as to prevent the storing of such items on it. Seats should be firmly anchored and the backs of folding seats should be fitted with secure locking devices (97-GP-6).

4.6 **FIRE PREVENTION**—Fires resulting from collision represent only a small part of the over-all accident picture, yet the results can be disastrous. Fires usually occur in the engine compartment as a result of accidental fuel spillage or electrical short circuits.

4.6.1 *Fuel Tanks*—In collisions, fuel tanks can break away, rupture or spill their contents through the filler pipe, thus creating fire hazards. Consequently, fuel tanks should be securely mounted in locations that are reasonably shielded from damage in collision from all directions and that are at the same time as remote as possible from the passenger compartment. The filler-cap should be so located and secured that it is unlikely to come off accidentally. Consideration might be given to fitting a check valve in the filler pipe to prevent spillage when the vehicle is on its side or inverted (97-GP-25).

4.6.2 *The Electrical System*—The electrical system should be provided with adequate fuses or circuit breakers to eliminate as far as possible fires caused by circuit overloading. A means of automatically switching off the electrical system might assist in preventing fires in cases of roll-overs and high-impact collision.

4.6.3 *Fire Retardant Material*—The materials used in padding, upholstering, and interior decoration of vehicles, should be fire resistant, so that they do not contribute to fires in the passenger compartment.

4.7 PEDESTRIAN HAZARDS—Accident statistics indicate that approximately one-quarter of all vehicle traffic accident fatalities involve pedestrians. The front end, sides, and wheels of vehicles should therefore be completely free from all nonessential protuberances (97-GP-27). Outside accountrements necessary for rearward vision or reference points should be constructed to collapse under a predetermined impact loading. Bumpers should be of flat configuration devoid of hook shape, to prevent snagging of clothing or objects carried by pedestrians; and should insofar as possible be designed so that in the case of contact the pedestrian would be carried to the outer edges of the vehicle. Some researchers seem to indicate that a wedgeshape up-sloped front end is less likely to injure pedestrians in the low-speed range of 20-25 mph than the flatter configurations. Since adult pedestrians are frequently thrown up onto the hood, the hood should be constructed to deform and absorb the energy of impact. Side gas-filler doors should not be of the type that can remain in the open position. Wheels should not have hub caps with protruding projections. Chrome stripping or its equivalent along the side of the vehicle should either be omitted entirely from automobile design or properly secured to prevent the snagging of clothing.

Subappendix (i)

ALPHABETICAL INDEX

Part II

GUIDE TO AUTOMOTIVE SAFETY

	Part II	Std.
Accessories—General summary	2.11	
Adjustability—Seat, steering wheel, controls	2.2.4	
Anchorage for restraining devices		97-GP-1
Anchorage for seats		97-GP-6
Arm rests		97-GP-20
Ash trays	4.3.4	97-GP-19
Ash tray illumination	2.6.5	
Automotive vehicle definition	1.2.1	
Back-up lights	2.6.7	97-GP-15
Brakes, disc	2.3.3	
Brake, fade, moisture, etc.	2.3	
Brake, front & rear distribution	2.3.4	
Brake indicator	2.7.2	97-GP-9
Brake metering device	2.3.4	
Brakes, non-locking	2.3.2	
Brake power assisted	2.3	
Brakes, self-adjustment	2.3.5	
Brakes, split	2.3.1	
Brake system—Dual operation	2.3.1	97-GP-9
Brake systems	2.3	97-GP-9
Brakes, trailers	2.3	
Bumpers	2.10	97-GP-10
Bumpers—Energy absorption	4.1.1	
Capacity—Tires	2.8.1	97-GP-14
Chains	2.8.4	
Communication	2.6	
Contoured seats	4.4.7	
Controls and bezel—Mounting	2.2	97-GP-3
Corner visibility	2.5.7	
Defrosters	2.5.4	97-GP-17
Disc brakes	2.3.3	
Design for prevention of accidents	2	
Design for prevention of injury	4	
Distractions	2.5.8	
Division, car trunk	4.2.5	97-GP-27
Door and window controls recessing	4.3.3	97-GP-18

	Part II	Std.
Door hinges	4.2.1	97-GP-5
Door latches	4.2.1	97-GP-5
Electrical systems—Protection	4.6.2	
Energy absorption—General	4.1	
Energy absorbing steering control system	4.2.3	97-GP-4
Exhaust systems—Faults—Danger	3.2.4	
Fire retardant material	4.6.3	
Fire prevention	4.6	
Flashers, four-way	2.6.6	97-GP-7
Foot spacing	2.2.1	
Forward compartment—Energy absorption	4.2.3	97-GP-2
Fuel tanks	4.6.1	97-GP-25
Gear quadrant	2.2.5	97-GP-11
Glare—Hazard reduction of	2.5.1	97-GP-13
Glazing materials, safety	2.5	97-GP-8
Glove compartment doors	4.3.6	97-GP-2
Handling—Steering	2.1	
Headlights	2.5.5	
Head rests	4.4.5	97-GP-22
Helmets—Safety	4.4.6	
Hydroplaning	2.8.5	
Indicators—Turn signal & high beam	2.7.1	
Inspection and maintenance	3	
Instruments and indicators	2.7	
Instrument warning lights	2.7.4	
Interior impact hazards	4.3	97-GP-3
Interior vehicle lighting	2.6.5	
Keys—Location	2.2.3	97-GP-3
Knobs—Location	2.2.3	97-GP-3
Lap-type seat belts	4.4.1	97-GP-1
License plates, reflectorized	2.6.3	
Lighters—Cigarette		97-GP-19
Lights—Tail and stop lights color	2.6.1	
Lights—Headlights	2.5.5	
Lights—Malfunction	3.2.2	
Luggage compartment barrier	4.2.5	97-GP-27
Maintenance of tires by operator	2.8.6	
Maintenance of vehicles correction	3.4	
Mirrors—Mounting—Types	2.5.6	97-GP-16
Motor-Mount and Fire-wall-Design	4.2.4	
Ornamentation, outside	4.7	97-GP-26
Padding—Interior of vehicle	4.1.2	97-GP-2
Panel-mounted instruments and control devices		97-GP-3
Parking brake controls	2.2.2	
Passenger compartment—Intrusion of steering column ..	4.2.3	97-GP-4
Passenger compartment—Integrity	4.2	
Pedestrian hazards	4.7	97-GP-26

	Part II	Std.
Pollutants emission control	2.9.1	
Power plant—Weight ratio—Controls	2.4	
Power-weight ratio	2.4.1	
Purpose of Part II	1.1	
Rear-view mirrors	4.3.1	97-GP-16
Rearward warning devices	2.6.7	97-GP-15
Rear-window vision aid—Defroster	2.5.4	97-GP-17
Recessed instruments and control devices		97-GP-3
Reflectorization—License plates, triangles, door edges ...	2.6.3	
Restraint to objects in passenger compartment	4.5	97-GP-6
Restraint to occupants	4.4	97-GP-1
Rims—Wheel—Safety		97-GP-14
Roll bars		97-GP-24
Roof structure	4.2.2	97-GP-24
Safe vehicle—Definition	1.2.2	
Safe door-latches and hinges	4.2.1	97-GP-5
Safety glazing materials	2.5	97-GP-8
Safety helmets	4.4.6	
Safety inspection by the owner	3.2	
Safety inspection—Professional—Enforcement agencies ..	3.3	
Seat anchorage		97-GP-6
Seat belt—Energy absorption	4.4.4	
Seat belt and shoulder harness	4.4.1	97-GP-1
Seat—Padding	4.3.2	97-GP-21
Snow tires—Use of	2.8.2	
Side-marker warning devices	2.6.4	97-GP-23
Speed—Warning device—Speedometer	2.7.3	
Split brake system	2.3.1	97-GP-9
Stability and handling—Steering	2.1	
Stalling—Engine	2.4.3	
Standard gear quadrant or shift position	2.2.5	97-GP-11
Steering control system energy absorption		97-GP-4
Steering function—Indication of wear	3.2.3	
Steering effort and response	2.1.1	
Sticking accelerators and controls	2.4.2	
Studded tires—Use of	2.8.3	
Suspension and road feel steering	2.1.2	
Switches, keys and knobs—Location—Standardization ..	2.2.3	97-GP-3
Tank filler—Pipes—Fire—Spillage	4.6.1	97-GP-25
Tanks, fuel—Fire—Spillage	4.6.1	97-GP-25
Tail and Stops lights—Colour—Position	2.6.1	
Tires—Capacity	2.8.1	97-GP-14
Tire—Lack of maintenance	2.8.6	
Tire—Maintenance and pressure	3.2.1	
Tires and Rims	3.2.1	
Tires—Studded use of	2.8.3	
Tinted windshields—Use of	2.6.8	

	<i>Part II</i>	<i>Std.</i>
Transmission lever positioning shift sequence	2.2.5	97-GP-11
Trunk compartment divided	4.2.5	97-GP-27
Trunk lid—Open—Hazards of	3.2.5	
Turning signals—Visibility—Spacing—Communication ..	2.6.2	
Under-Dash area—Impact protection	4.3.5	
Upper-Torso restraint devices	4.4.3	97-GP-1
Ventilation—Flue type—Fresh air intake—Etc.	2.9	
Vision—Requirement for	2.5	
Washers, Windshield	2.5.2	97-GP-12
Window controls—Recessing	4.3.3	97-GP-18
Windshild washers	3.4.1	97-GP-12
Windshield Wipers	2.5.3	97-GP-12
Whiplash	4.4.5	97-GP-22

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CANADIAN GOVERNMENT SPECIFICATION BOARD GUIDE TO TRAFFIC SAFETY

PART III

THE ENVIRONMENT

1. *Objective*

- 1.1 The objective of this section of the Guide to Traffic Safety is to give the best available information for the identification and control of factors involving environment that either contribute to or mitigate against automotive vehicle safety.

2. *Introduction*

- 2.1 Although the responsibility of the driver has been mentioned several times in the Guide, it must be re-emphasized that full responsibility for the control of the vehicle rests with the driver. He cannot reasonably expect that improvements in vehicle or highway design and construction will relieve him of that responsibility. When any of the factors affecting his driving task—the vehicle, the highway, the weather, or the condition of the driver himself—are at less than optimum conditions, it must remain the responsibility of the driver to adapt his driving to compensate for existing deficiencies.
- 2.2 Existing information will undoubtedly be altered with advancing knowledge and will require future modification of the recommendations now made.

3. *The Role of The Road*

3.1 *Basis of Design*

- 3.1.1 The safety of motorists and pedestrians has been one of the prime considerations governing road and street design and operation since the highway and traffic engineering professions came into existence during the second decade of this century. Highway engineering is most frequently defined in terms of the provision of roads and streets for the safe, comfortable, convenient and economical movement of persons and goods. The keystones of traffic control are engineering, education and enforcement, the three inseparable elements of any program to produce maximum safety and optimum service for road users. Practically all geometric design standards for roads (i.e., maximum curvature, maximum gradient, rate of change of gradient and lane width) have been developed on the basis of

safety experience and the analysis of vehicle operating characteristics. Traffic signs, signals, pavement markings and intersection channelization are designed to reduce the demands on driver ability and hence reduce accidents by minimizing potential conflicts between the travel paths of vehicles and pedestrians.

- 3.1.2 A great deal of research on road safety has been done by the highway and traffic engineering professions and probably half of all the technical literature in this field is either directly or indirectly concerned with this problem. The remainder of the research and literature deals with such matters as the structural design of pavement, bridges and embankments, economics, planning, and maintenance. Despite these efforts, the relationship of traffic accidents to roadway design and traffic control has not been mastered, and further intensive research is required to obtain the data needed to guide and support the engineering decisions that must be made to reduce accidents.

3.2 *Road Classification*

- 3.2.1 Roads and streets are used for public transportation and are basically designed to provide traffic service and land service. Traffic service is concerned with the movement of vehicles through some distance in a minimum amount of time and with the greatest comfort, convenience and safety. Land service is concerned with access to properties such as industries or residential dwellings where all movements originate or terminate. Ideally, each road or street facility should be designed to provide a particular service but this is generally impracticable. A wide range of uses and users must be accommodated on one highway, road or street, and compromises in design must be made.
- 3.2.2 To reduce to more manageable proportions the engineering problems associated with planning, design and operation, roads have been classified into eight basic types. This road classification is used throughout Canada and consists of Freeways, Arterials, Collectors and Locals in both rural and urban areas. Definitions of each of these road classifications are contained in Table I. The characteristics of each of the road classes are shown in Tables II and III.
- 3.2.3 All classes provide service to traffic and, with the exception of Freeways, also provide direct access to land. Freeways and Arterials serve through-traffic movements while local roads are used almost exclusively for land access. Collector roads in both rural and urban areas provide a combination of traffic service and land service. As each type of road has different operating characteristics, the engineering designs for each also differ in order to accommodate these conditions.

3.3 *Perception—Judgment—Reaction Time*

- 3.3.1 For any road class, accident rates increase in proportion to the difficulty of the driving task. Demands upon the driver's ability are increased by the presence of more vehicles, intersections, driveways, and changes in operating conditions. The principal objective of road

design is to minimize the demands by providing the driver with sufficient time to cope with each new situation. The time required by the driver to take the necessary action is usually subdivided into the times necessary for perception, judgment and reaction. These times have been measured, and standards for such roadway features as passing sight distance have been developed to provide the required time for maximum planned operation speeds.

TABLE I ROAD CLASSIFICATION—1964

Rural Freeways—Rural Freeways are intended to accommodate the movement of large volumes of traffic at high speeds under free-flow conditions. Rural Freeways connect the larger cities, industrial concentrations and recreational areas. They also serve as major highway routes through intensely developed areas, and serve larger international and interprovincial travel movements. The need for unrestricted traffic movement on these facilities justifies the elimination of direct property access. Ultimate development will require grade separation at all crossing roads.

Rural Arterial—Rural Arterial roads are intended to move large volumes of traffic at high speeds. The chief distinction between this class and the Freeway class is in the full control of access. Roads that have full control of access should, without exception, be in the Freeway classification. Rural Arterial roads, together with Freeways, serve as the major routes in a network connecting the major economic regions and centers of a province such as large cities, industrial concentrations, agricultural areas and recreational facilities. Arterials carry large traffic volumes moving at high speed; direct access to abutting lands may be restricted or even eliminated.

Rural Collector—Rural Collector roads collect traffic from Local roads and feed it to Arterials, or distribute it from Arterials to Locals. They generally form an integrated network throughout all developed areas of a province and provide direct traffic service for developments such as tourist areas, mining areas and the smaller towns and villages. Rural Collector roads have a land service function of equal importance to their traffic service function in that they directly serve the adjacent properties.

Rural Local—The main function of Rural Local roads is to provide land access. The only traffic service function of a Local road is to allow vehicles to reach the frontage of properties from the main highways. Development roads that serve one or two natural resource areas may be considered as Local roads until volume and function justify reclassification.

Urban Freeways—Urban Freeways are intended to accommodate heavy volumes of traffic moving at high speeds under free-flowing conditions. Urban Freeways connect major points of traffic generation and may serve as urban extensions or principal Rural Freeways and Arterials. They are intended to serve long-trip traffic between large residential areas, industrial or commercial concentrations and the central business district. To provide optimum mobility

for through traffic, service to adjacent lands is completely eliminated. No parking, unloading of goods nor pedestrian traffic is permitted.

Urban Arterial—Urban Arterial roads are intended to carry large volumes of all types of traffic moving at medium to high speeds. These roads serve the major traffic flows between the principal areas of traffic generation and also connect to Rural Arterials and Collectors. In urban areas without Freeways, Arterial roads provide the best quality of traffic service. Urban Arterial roads perform a secondary function of servicing adjacent properties. The amount of access permitted to these properties should not interfere with the primary function of moving through-traffic.

Urban Collector—Urban Collector roads provide both traffic service and land service. The traffic service function of this type of road is to collect from and distribute to the Local (land service) roads traffic on the Arterial (traffic service) roads. Full access to adjacent properties is generally allowed on Collectors.

Urban Local—The main function of Local roads is to provide land access. Direct access is allowed to all abutting properties. Local roads are not intended to move large volumes of traffic. The Local road primarily carries only traffic with an origin or destination along its length. It is not intended to carry through traffic other than to immediately adjoining roads. Local roads may be residential, commercial or industrial depending on the adjacent land.

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- 3.3.2 An accident can occur when a driver fails to perceive, or incorrectly perceives, a situation. The engineer makes every effort to ensure that the driver perceives each new situation by providing properly designed signs located where they may be seen by all drivers well in advance of the changed condition. Roadway designers also strive to avoid alignments where a driver may not perceive a situation in its true perspective; drivers have been known to fail to negotiate curves under such conditions.
- 3.3.3 When a changed situation has been perceived by a driver, time is required to make a judgment as to the action that must be taken. If multiple complex decisions must be made at a single time, greater strain is placed upon the driver's ability and the judgment time may be increased. Engineers endeavor to minimize multiple decisions which lengthen judgment time and produce potential accident situations.
- 3.3.4 After a situation has been judged, the driver requires time to take action. This action may consist of applying brakes or seeking refuge on a shoulder to avoid collision. For these reasons, roadway designs must provide alternative opportunities for action such as wide shoulders as refuge for vehicles, and pavements with high skid resistance so that a vehicle may stop in a minimum of time.

3.4 *Accident Cause and Severity*

- 3.4.1 It is evident that when roadways have been designed with a minimum of demands upon the driver's ability and with sufficient

time to allow for perception, judgment and action, it is necessary to ensure that the operating rules for which the roadway was designed are enforced. It is also evident that for any roadway there will always be some demands upon the ability of all drivers. Therefore, it is necessary to ensure that human judgment is not impaired by alcohol, drugs and physical or mental handicaps.

3.4.2 In addition to reducing accidents, roadway design is concerned with reducing the severity of accidents. Engineers attempt to reduce the number of obstacles adjacent to the roadway with which a vehicle might collide when out of control. Considerable attention is also given to the selection of side slopes, back slopes and ditch cross-sections, so that the driver of a vehicle that has left the roadway may be able to regain control before it collides with some obstacle or overturns.

TABLE II
CHARACTERISTICS OF RURAL ROAD CLASSES

	Rural Freeways	Rural Arterials	Rural Collectors	Rural Locals
Traffic service	Optimum traffic movement	Traffic movement primary consideration	Traffic movement and land access of equal importance	Traffic movement secondary consideration
Land service	No access	Land access secondary consideration		Land access primary consideration
Range of average daily traffic volume, vehicle/day	More than 8,000	1,000-12,000	200-5,000	Not applicable
Characteristics of traffic flow	Free flow	Uninterrupted flow except at signals	Interrupted flow	Interrupted flow
Average running speed off-peak condition	45-60 m.p.h.	40-60 m.p.h.	40-50 m.p.h.	30-50 mp..h.
Vehicle type	All types heavy trucks average 20 to 30%	All types 10 to 20% trucks	All types, up to 30% trucks in the 3-5 ton class	Predominantly passenger cars; light to medium trucks; occasional heavy trucks
Percentage of miles	up to 5	5-10	10-20	65-85
Percentage of vehicle-miles	0-40	40-70	15-25	2-15
Connects to	Freeways Arterials Collectors	All classes	All classes	Arterials Collectors Locals

TABLE III
CHARACTERISTICS OF URBAN ROAD CLASSES

	Urban Freeways	Urban Arterials	Urban Collectors	Urban Locals
Traffic service	Optimum traffic movement	Traffic movement primary consideration	Traffic movement and land access of equal importance	Traffic movement secondary consideration
Land service	No access	Land access secondary consideration		Land access primary consideration
Range of average daily traffic volume vehicle/day	More than 20,000	5,000-30,000	1,000-12,000	Not applicable
Characteristics of traffic flow	Free flow	Uninterrupted flow except at signals and cross-walks	Interrupted flow	Interrupted flow
Average running speed off-peak conditions	44-55 m.p.h.	30-40 m.p.h.	20-30 m.p.h.	15-20 m.p.h.
Vehicle type	All types up to 20% trucks	All types up to 20% trucks	All types	Passenger and service vehicles
Percentage of miles	Up to 10		30 approx.	70 approx.
Percentage of vehicle-miles	0-50	22-65	20-30	2-10
Connects to	Freeways Arterials	Freeways Arterials Collectors	Arterials Collectors Locals	Collectors Locals

4. Accidents Rates

4.1 Accident Reports

4.1.1 Throughout Canada all accidents involving more than one hundred dollars property damage are reported on standard forms. These forms are generally completed by a police officer on road patrol duty but may, in some cases, be submitted to either the police or motor vehicle registrar by the persons involved. The accident-reporting forms are not identical in each province as they are designed to provide other information required by local legislation. The accident reports are used by the police and highway officials to maintain traffic accident records to:

- 4.1.1.1 Identify particular traffic accident problem areas so that officials of provincial or local governments may take action to correct unusual situations.
- 4.1.1.2 Provide data for highway and traffic engineers responsible for roadway design and operation.

- 4.1.1.3 Provide facts for the education of the motoring public.
- 4.1.1.4 Assist the police in the supervision of roadways and enforcement of regulations.
- 4.1.1.5 Provide information to Motor Vehicle Branches regarding the driver's financial responsibility.
- 4.1.2 Accident reports must be designed to provide adequate information for each of these purposes. As there are a great number of circumstances that must be recorded for each accident, and as in 1964 there were in excess of 360,000 traffic accidents in Canada involving nearly 4,000 fatalities, it is a formidable task to record with sufficient accuracy all the information required. As a result, there are deficiencies in accident statistics throughout Canada, particularly in the detailed information contained in the reports for individual accidents. There is a need for further co-operative effort by all agencies involved in this problem throughout Canada to improve accident reporting procedures and the analysis of this information.

4.2 *Use of Accident Information*

- 4.2.1 Highway and traffic engineers make extensive use of accident reports to:
 - 4.2.1.1 Identify and treat multiple accident locations.
 - 4.2.1.2 Evaluate the relative safety of different geometric design features such as lane width, shoulder width, curvature, gradient and side sloped.
 - 4.2.1.3 Evaluate the effectiveness of improvements in the design of hazardous locations, or identify substandard sections of road that should be assigned high priority for reconstruction or improvement.
- 4.2.2 Accidents occurring at road intersections are generally identified by location and analyzed to determine the causes and corrective measures required to prevent recurrence. To evaluate sections of road, accident rates are normally calculated. These accident rates are expressed as:
 - (a) Accidents permillion vehicle-miles
 - (b) Fatal accidents per hundred million vehicle-miles
 - (c) Fatalities per hundred million vehicle-miles.

Accident rates as expressed above take into consideration the relative exposure to accidents on roadways with different amounts of traffic and therefore may be used to compare the relative safety of the roadway design.

- 4.2.3 All Provincial highway departments in Canada, as well as the road departments of the same municipalities, analyze accident data at multiple accident locations and on short sections of highway. Most highway departments calculate accident rates per million vehicle-miles for highway sections in order to compare their relative safety. Not all highway departments, however, calculate accident rates for road systems because it is difficult to make accurate estimates of the total travel on each system as opposed to the travel on a short

section of road where traffic counts are available. Accident rates for a system are not particularly useful for engineering analysis because of the differences in topography, environment and design that occur over the system. The data in Table IV do, however, indicate the current accident rates for different classes of road and the influence of design and operating conditions on accident occurrence.

4.3 Accident Rates on Road Classes

- 4.3.1 It will be noted in Table IV that the accident rates on urban streets are between three and four times as great as on rural roads. This may be attributed to the greater demands placed upon a driver's ability by the presence of more cars, intersections and changes in operating conditions. This is substantiated by the fact that the accident rates on freeways in urban areas in both Canada and the United States range between 1.0 and 3.0. These low rates result from the separation of opposing traffic by medians and the elimination of level crossings, traffic lights, stop signs and pedestrians. A recent study of a freeway and multilane-divided arterial street with intersections at grade, serving the same corridor in a city, showed that the freeway had an accident rate of 3.5 compared to the arterial street accident rate of 29.0. Although there are relatively few miles of urban freeway in Canada, substantial differences in the accident rates have been found where comparisons of this type were possible. Numerous studies in the United States have found similar differences, emphasizing the importance of roadway design.

TABLE IV
1964 ACCIDENT RATES

(Number of Traffic Accidents per Million Vehicle-Miles of Travel)

	Ontario	Saskatchewan	Manitoba	U.S.A.
Urban Freeways.....				2.0
Urban Arterials.....				5.0
Urban Collectors.....				
Urban Locals.....				
All Urban Streets.....	8.5	12.3		
Rural Freeways.....	1.7	1.2		2.0
Rural Arterials.....	2.7			
Rural Collectors.....	3.1	2.4	2.1	4.0
Rural Locals.....	5.6	5.6		
All Rural Roads.....	3.1	3.4		
All Roads and Streets.....	5.3	5.7	5.9	

NOTE: More data may be obtained to complete this table and make it more representative.

- 4.3.2 In Table IV it will also be noted that accidents rates on rural Freeways are substantially lower than those on arterial, collector and local rural roads. This may be attributed once again to the

elimination of intersections and pedestrians and to the separation of traffic moving in different directions. Accident rates on rural arterial roads are lower than on collector and local roads in rural areas because of the improved geometric design of these facilities, the control of intersections at grades, traffic regulations suited to design and environment, and greater enforcement of driving rules and roadway regulations.

- 4.3.3 The importance of roadway design is further illustrated by the following data obtained in a study "Accidents on Freeways in California" by Karl Moskowitz;

Type of Roadway	Accident Rate per Million Vehicle-Miles
Multilane, undivided, no access control	4.09
Multilane, divided, no access control	2.91
Multilane, divided, partial access control	1.69
Multilane, divided, full access control (Freeway) ..	1.00

Studies of the Bureau of Public Roads in the United States have found a fatality rate on the Interstate (freeway) rural highway system of 2.8 deaths per hundred million vehicle-miles compared with a rate of 9.7 deaths per hundred million vehicle-miles on the older highways they replaced in the same corridors. In these studies the only variable of consequence was the design of the road.

4.5 Road Improvements

It is apparent that the total number of traffic accidents in Canada can be reduced through the provision of better roads. This is achieved mainly by reduction in the demands upon the driver's ability through the reduction or elimination of intersections, separation of pedestrians and vehicular traffic, by providing sufficient time for perception, judgment and reaction where roadways conditions change. It would be impossible to replace the more than 400,000 miles of road in Canada with freeways, but freeways could be provided to carry as much traffic as is economically feasible, while the geometric design of older roads could be improved to modern standards. A very significant percentage of single-car accidents occur on straight level sections of highway under ideal conditions. Consequently improvements in geometric standards to older roads, including freeway treatment, must be carefully evaluated.

Road Design

5.1 Design Features and Accidents

- 5.1.1 As indicated in the previous section, there are significant differences in the accident rates for each road class because of the distinctive design features and operating characteristics of the facilities provided. This was particularly evident in the case of freeways where the accident rates were from one third to one-tenth of those for arterial and collector roads. In addition to general roadway design, there has been considerable research in Canada, the United States, Great

Britain and elsewhere into the relationship between traffic accidents and the individual elements of the geometric design of roadways. The following statements represent some, though by no means all, of the important conclusions regarding geometric design that have been developed in the many investigations undertaken:

- 5.1.1.1 Where all other conditions are equal, accident rates increase progressively as the width of pavement lane decreases progressively below 12 feet.
- 5.1.1.2 Accident rates are higher on roads with narrow shoulders, particularly less than 6 feet in width.
- 5.1.1.3 Accident rates are significantly lower where opposing traffic is separated by medians. The accident rate is also affected by the cross-section and width of medians; depressed grass medians more than 60 feet wide have the lowest rates.
- 5.1.1.4 Median barriers of suitable design are effective in reducing the severity of accidents.
- 5.1.1.5 The severity of accidents can be significantly reduced by providing gentle side slopes and back slopes in the order of 6 to 1 with rounded ditch bottoms.
- 5.1.1.6 Accident rates are higher where bridges are narrower than the full width of pavement and shoulders.
- 5.1.1.7 Accident rates may be decreased by increasing the skid resistance of the pavement surface.
- 5.1.1.8 Where other conditions are equal, accident rates increase where the horizontal curvature on roadways exceeds 3 degrees. (A 3-degree curve is a horizontal curve in which the angle at the center of the curve subtended by a cord 100 feet long on the center line of the curve is equal to 3 degrees.)
- 5.1.1.9 Accident rates increase as the gradient of a road increases.
- 5.1.1.10 Accident rates at intersections depend upon design and are higher for acute-angled intersections than for right-angled or T-intersections.
- 5.1.1.11 Accident rates have been observed to increase where the length of passing sight distances decrease and where the frequency of passing restrictions increase.
- 5.1.1.12 Accident rates at intersections generally increase with traffic volume and with increasing delays to vehicles.
- 5.1.1.13 Accident rates increase where obstacles are close to the pavement edge.
- 5.1.1.14 Accident rates at intersections can be reduced by providing roadway lighting.
- 5.1.1.15 Accident rates at railway grade crossings can be reduced progressively by the substitution of bells, flashing lights, wig-wags and gates for warning signs.

- 5.1.1.16 Accident rates are reduced where two-way streets are converted to one-way operation.
- 5.1.1.17 Accident rates are reduced by the prohibition of curb parking.
- 5.1.1.18 The numbers of accidents and their severity can be reduced by providing guardrails, guide posts, delineators, fencing and pavement edge markings.

5.2 *Design Standards*

- 5.2.1 In Canada, all provincial highway departments, federal government departments responsible for roads, and the road departments of most municipalities design all new roads and reconstruct existing roads according to the recommendations contained in the Manual of Geometric Design Standards for Canadian Roads and Streets. This Manual was published by the Canadian Good Roads Association in 1963 after four years of preparation by committees consisting of close to one hundred of the best design engineers of all major road departments in Canada. In this Manual, the functional classification of roads outlined in Table I has been subdivided into 34 geometric design classes on the basis of design speed. Design speed was used to permit differences in quality of the road that might be necessitated by terrain or regional economic factors.
- 5.2.2 For each of the 34 road classes, standards were established for:
 - 5.2.2.1 Alignment elements (gradient, curvature, sight distance)
 - 5.2.2.2 Cross-section elements (lane width, shoulder width, side slopes)
 - 5.2.2.3 Intersections (alignment, channelization, auxiliary lanes, turning radii)
 - 5.2.2.4 Grade separations and interchanges warrants, types, clearances, ramps, weaving sections)
 - 5.2.2.5 Illumination (intensity, warrants, maintenance)
- 5.2.3 In addition to recommending standards for each element of the geometric design of roads and streets, this Manual places great emphasis on the need for achieving consistency in geometric design throughout a particular route. The Manual stresses the need to avoid abrupt changes in alignment, unexpected deviations from the general standards of a section and displeasing or hazardous combinations of horizontal and vertical alignment. It is believed that the standards contained in this book will produce the safest possible design for each class of road or street. Continuing committees have, however, been established to modify these design standards as further information is obtained. Research is being carried out in Canada to evaluate modifications to these standards. Research on geometric design being carried out in other countries is also being carefully studied so that modifications to these standards may be made as significant findings become available.

5.3. Road Improvements

All highway departments attempt to identify multiple accident locations; accidents at such locations are analyzed and, where causes can be identified, these locations are reconstructed to eliminate the hazard. Many highway departments are evaluating the skid resistance of pavements and, where the coefficient of friction is low, are attempting to correct deficiencies by the provision of new skid-resistant surfaces. All highway departments are also attempting to improve roadside development and the aesthetics of roads by landscaping and the removal of unnecessary advertising signs and similar distractions that may be hazardous.

6. Road Operations

6.1 Uniform Traffic Control Devices

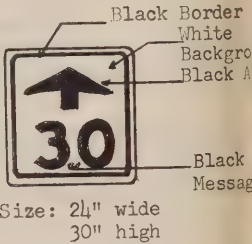
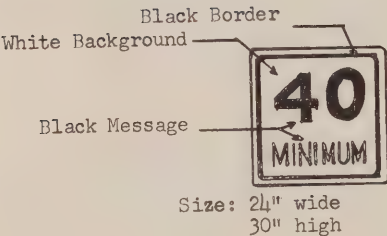
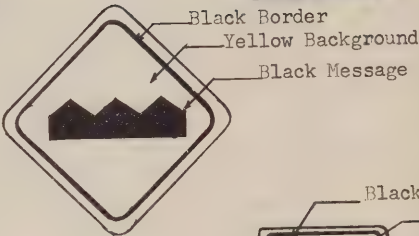
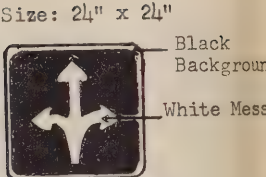
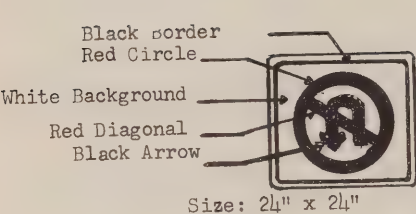
6.1.1 With adequate road design, conforming to the Manual of Geometric Design Standards for Canadian Roads and Streets, the safety of a particular section of road depends upon the "rules of the road" and the adequacy of traffic control devices. In January 1960, the Canadian Good Roads Association published the first Manual of Uniform Traffic Control Devices for Canada prepared during a period of four years by a number of expert committees composed of approximately one hundred traffic and highway engineers from all parts of Canada. This Manual was produced by the Council on Uniform Traffic Control Devices for Canada, which is jointly sponsored by the Canadian Good Roads Association and the Canadian Section, Institute of Traffic Engineers. The Council is composed of representatives of all Provincial government highway departments, the road or traffic departments of major municipalities, the Government of Canada, and national associations. The Manual contains standards for traffic signs, traffic signals and pavement markings for use throughout Canada. See Figure I for examples.*

6.1.2 Over the following four years these standards were adopted and implemented by practically all jurisdictions in Canada. In May 1966 a major revision of the Manual was issued by the Canadian Good Roads Association. The principal changes involved the replacement of word messages by symbols on practically all road signs; symbolization of signs being introduced to aid the perception of signs and recognition of their messages by all motor vehicle users, and to overcome the need for bilingual messages in certain sections of the country. In general, the shapes and colors of signs conform to current North American practice, and the symbols being introduced are copies of, or improvements on, those used under international agreement in Europe. The development of these new symbol signs has involved extensive research to ensure that they will be easily recognized by all motorists in Canada as well as by visitors from the United States and Europe.

* A comprehensive set of warning and regulatory, in color, will be appended to the guide when issued.

6.1.3 The Manual of Uniform Traffic Control Devices for Canada contains:

- 6.1.3.1 Standards for the replacement of signs so that drivers will have sufficient time to perceive, judge and react to the message being conveyed.
- 6.1.3.2 Standards for the positioning of traffic signals so that motorists will be able to perceive them under the most adverse conditions; warrants for the installation of traffic signals and instruction on timing are included.
- 6.1.3.3 Standards for pavement markings, specifying the condition under which no-passing zones and edge markings should be placed and giving instructions for marking pavements in the field:
 - (a) Center line pavement markings consist of solid barrier lines, broken lines or combinations of the two
 - (b) Solid lines are designed to separate adjacent traffic lanes that accommodate traffic moving in opposite directions on two-lane roads or traffic moving in the same direction on multilane divided roads
 - (c) Solid-barrier lines are provided on 2-line roads to prevent traffic from entering the opposing lane when sight distances are definitely inadequate to see an approaching car in sufficient time to return safely to the proper lane
 - (d) Where solid-barrier lines do not exist, a driver may cross into the adjacent lane to pass a vehicle
 - (e) The absence of a solid-barrier line does not insure safe passing as this depends upon the distance to opposing traffic, the speed of the vehicle being passed and the acceleration characteristics of the passing vehicle
 - (f) Passing on a 2-lane road with a broken center line is a judgement situation.
- 6.1.4 It is believed that the standard traffic control devices specified in this Manual provide the greatest possible safety for motorists when properly used. The Council on Uniform Traffic Control Devices for Canada has, however, made provision for amendments to this Manual as the results of further research become available. It is in constant contact with similar bodies in the United States and Europe, and is itself sponsoring seventeen active research projects in Canada to evaluate modifications to the existing standards. In addition, another twenty research projects are in the planning stage.



From: Manual of Uniform Traffic Control Devices

Figure 1

6.2 *Rules of the Road*

- 6.2.1 The rules of the road that govern the conduct of motorists and pedestrians on public roads and streets differ somewhat from province to province. As an example, some provinces permit right turns on red lights, others do not. More seriously, the rights of way of motorists and pedestrians are not always clearly defined. In recognition of this, the Commissioners for Uniformity of Legislation in Canada in 1956 attempted to prepare uniform rules of the road for Canada. The draft legislation was adopted in one province but was found to be unacceptable in all others.
- 6.2.2 In an attempt to remedy the deficiencies in this document, the Traffic Operations Committee of the Canadian Good Roads Association undertook to review and revise the draft rules of the road in 1964. This committee is attempting to make these rules of the road consistent with best practice and with the recommendations contained in the Manual of Uniform Traffic Control Devices for Canada. Revision of these rules of the road for Canada is expected to be completed in 1966. The co-operation of all legislative and enforcement officials will then be sought to overcome any legal technicalities and ensure their adoption and implementation throughout Canada.

6.3 *Road Maintenance*

- 6.3.1 Road operations are greatly affected by the standard of maintenance on the road systems. Poorly maintained road surfaces can markedly increase the likelihood of accident involvement unless drivers take adequate precautions when conditions are less than ideal.
- 6.3.2 Many accidents can be attributed to snow or ice on the road surface. At the present time the provincial highway departments spend 56 million dollars a year on snow and ice removal from their road systems. A similar amount is spent by urban and rural municipalities. Expenditures for winter maintenance have more than doubled in the last ten years in an effort to ensure that all roads and streets may be used with safety throughout the year. Winter maintenance consists of ploughing snow, sanding and salting the icy surfaces. The public sometimes condemns the use of salt because of corrosion to automobiles, but there is ample evidence that the accident rate increases sharply when no freezing-point-depressant is used, and delays and congestion increase markedly also. Although highway departments in Canada probably provide the highest standard of winter maintenance of any country in the world, accidents do occur as a result of slippery surfaces during the winter.

6.4 *Road Construction*

- 6.4.1 In the reconstruction or repair of an existing road it is necessary to temporarily divert traffic or restrict normal traffic operations while the work proceeds. As these operations are generally required at specific locations on free-flowing, high-speed routes, they constitute an abrupt hazard that is extremely dangerous to both motorists and workmen. The problem is aggravated because reconstruction and

repair work generally must be carried out during the summer months when traffic volumes are highest.

- 6.4.2 To prevent accidents and minimize the discomfort and inconvenience to motorists, standard warning, guide and information signs are erected in advance of, and throughout, the work area. The design and positioning of these standard signs is specified in the Manual of Uniform Traffic Control Devices for Canada. Construction signs are used to warn traffic of hazardous conditions either on, or adjacent to, the road; the colors are, insofar as possible, yellow with black letters and symbols, and may be partially or totally reflectorized.
- 6.4.3 In addition to being specified in the Manual, details of construction signs, barricades and the use of flagmen are always included in the general provisions of provincial highway department contracts as a requirement in the performance of the work. Furthermore, the provincial and national construction associations and construction safety associations have further requirements for such traffic control as well as continuing educational programs for contractors, employees and the general public.
- 6.4.4 In spite of the standards and regulations governing the control of traffic on sections of road being reconstructed or repaired, such work is frequently carried out, particularly on secondary and local roads, with inadequate signing or flagmen to warn the motorists of the hazardous condition. Therefore, motorists should not only obey all construction signs and flagmen, but should be on the alert for projects where such traffic control is inadequate.

6.5 *Driver Characteristics*

- 6.5.1 Despite good geometric design and the provision of adequate traffic control devices, rules of the road and effective maintenance, accidents still do occur on all roads and streets. There is no doubt that the number of traffic accidents can be reduced by replacing large mileages of existing inadequate roads with expensive, modern facilities designed to reduce the demands upon driver ability to a minimum. However, it is not economically feasible to eliminate all demands upon a driver's ability, and the engineer must therefore rely upon reasonably good driving practices and adequate law enforcement.
- 6.5.2 Some pertinent results from the great many studies conducted in Canada, the United States and elsewhere indicate the following:
 - 6.5.2.1 (a) Improper driving for existing conditions is responsible for by far the greater majority of all traffic accidents and traffic fatalities.
 - 6.5.2.2 (b) On a particular highway, for a particular set of conditions, drivers settle into a pattern of speed of travel that reflects roadway conditions. Posted speed limits must therefore be realistic if the laws are to be obeyed.
 - 6.5.2.3 (c) The United States Bureau of Public Roads has demonstrated in its study "Accidents on Main Rural Highways" that the safest speed

is the average speed of all cars on a particular stretch of road. The likelihood of a car being involved in an accident is directly related to its deviation from the average speed of travel, whether it is going more quickly or slowly than the other cars in the traffic stream.

6.5.2.4 (d) The probability of accident involvement doubles at speeds 15 miles an hour above or below the average travel speed.

6.5.2.5 (e) There is no evidence that higher travel speeds, when compatible with modern highway facilities, result in increased accident frequency, there is evidence that accidents are more severe at higher speeds.

6.5.3 It is clearly apparent that:

6.5.3.1 Uniform traffic control devices must be properly installed on all roads and streets.

6.5.3.2 Traffic regulations, such as speed limits, must be realistic.

6.5.3.3 Uniform rules of the road for Canada must be adopted as soon as possible.

6.5.3.4 Drivers must be educated to these rules of the road.

6.5.3.5 Strict enforcement must be imposed to minimize the number of drivers who deviate from the rules and regulations.

6.6 *Weather Conditions*

6.6.1 Roads, vehicles, and driver regulations are designed primarily for "good weather" operations. Attempts are made by the designers to minimize the deterioration of roads and vehicles under adverse weather conditions but the onus remains on the driver to adjust to non-ideal conditions.

6.6.2 Weather affects two major factors in the driving task: visibility and traction. Conditions affecting visibility obviously include fog, darkness, and the various types of precipitation. However, strong sunlight at sunrise or sunset can seriously inhibit a driver's ability to see, especially if the situation is compounded by dirt on either side of the windshield. East-west roads are particularly affected in this way and warrant extra attention from drivers travelling in either direction. At night, even on divided thoroughways, if no provisions exist to shield approaching drivers from headlight glare, low beam lights must be selected, and speed must be reduced to keep stopping distance within the headlights' range.

6.6.3 Traction or friction between tire and road surface depends on many factors, including: road surface material and condition; tire size, design, amount of tread remaining, and inflation pressure; vehicle weight and speed; and, perhaps most significant, weather conditions. Aside from the obvious effects of snow or ice on the road surface, the driver should be aware that even light rain can reduce traction between tire and road appreciably, sometimes to only one-quarter of that for the same pavement when dry. At highway speeds in heavy rain (or if puddles are permitted to collect on the roadway) the vehicles' tires tend to ride atop a layer of water and hence have no

significant contact with the road itself. This condition, known technically as hydroplaning, can result in a loss of traction more severe than if the vehicle were on glare ice.

- 6.6.4 Road design and maintenance can only attempt to minimize the effects of non-ideal weather; in the final analysis the driver must make the necessary adjustments (usually increased attention and decreased speed) to assure that safety levels are preserved. Specific cautions for driving in adverse weather conditions are delineated in most books on driving techniques, for example "Sportsmanlike Driving."

7. Accident Analysis

7.1 Use of Accident Reports

- 7.1.1 A recent survey by the Canadian Good Roads Association showed that all ten Provincial highway departments make extensive use of accident reports provided by the police. In all Provinces, reportable accidents are considered to determine whether they are associated with a roadway deficiency. In most provinces, accident spot maps are maintained either by the police or the highway department and accident reports are filed by road intersections or control sections. These maps and files are used to identify multiple-accident locations. When such locations become apparent, the reports on all accidents are studied to determine how the design of the road section or intersection can be modified to reduce the accident potential. In most Provinces, formal procedures have been established to assign high priority for reconstruction to sections where accident rates are abnormally high.
- 7.1.2 In most Provinces, accidents are identified by key points on the road system such as nearby intersections or river crossings. In two provinces, mileposts are used by the police to identify accident locations. In most provinces, accident locations are reported to the nearest one-tenth mile, but in two provinces the highway departments do not consider it important that the accuracy of reported locations need be any greater than the nearest one mile. Accident reports currently used do not contain the detailed information needed for engineering analysis. In most cases it is difficult to determine from them whether the accident was due to the road, the vehicle, the driver or a particular combination of these. Blood alcohol content cannot always be determined so an accurate assessment cannot be made as to whether the driver was impaired. Vehicles are very rarely inspected by competent persons to determine whether the accident might be attributed to some mechanical defect. Notwithstanding the present difficulties, accident report forms should contain sufficient detail to determine if the road conditions contributed to an accident.

7.2 *Accident Investigation*

- 7.2.1 It is evident that more detailed and accurate accident reporting is needed throughout Canada so that this information can be analyzed to determine the most appropriate measures for combatting the problem. In addition to more accurate accident reporting, there is a need for detailed crash investigation research. As each traffic accident is unique and usually the result of a chain of events, there is need for detailed research by teams composed of engineers, doctors, lawyers and sociologists to delve into the basic underlying factors causing accidents. For example, certain road design features might have hypnotic effects on drivers or adverse influence upon persons with epileptic tendencies.
- 7.2.2 There are indications that, under certain roadway conditions, the operating characteristics of vehicles may alter significantly but the driver may not be able to compensate for the changes. Interdisciplinary teams of experts may be able to identify some of the basic underlying causes of traffic accidents through detailed investigation so that corrective measures may be taken.

7.3 *Engineering Analysis*

- 7.3.1 At the present time, accident data are analyzed by highway departments by means of personal appraisal of individual accident reports, collision diagrams at multiple-accident intersections, or analysis of accident rates on road sections.

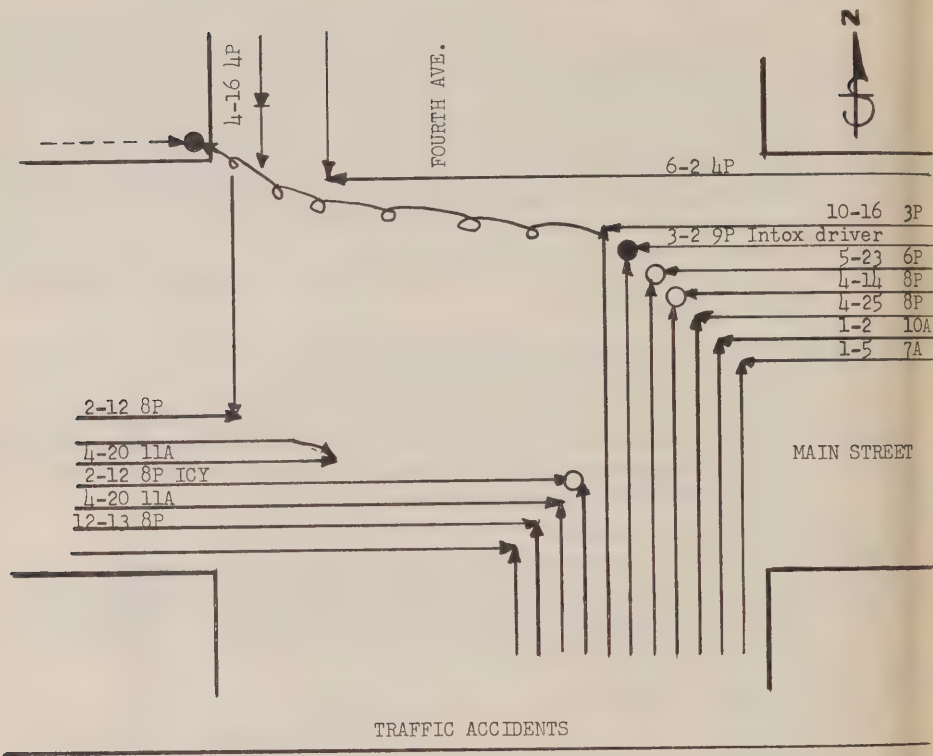
7.4.1 *Personal Appraisal*

- 7.4.1 Highway departments examine the reports of each individual serious accident, as well as all reports at multiple-accident locations. In addition, some highway departments require district engineers to submit more complete reports on serious accidents, including photographs of the location, in an effort to attribute the accident to a specific cause.

- 7.4.2 In cases where a highway deficiency is responsible, corrective measures are usually devised and implemented promptly by the highway department.

7.5 *Collision Diagrams*

- 7.5.1 Collision diagrams, Figure 2, are used to analyze accidents at intersections by most provincial highway departments and by all city traffic engineers. These diagrams illustrate the intersection features together with the direction of travel of the vehicles and the manner of collision. The engineer then examines the diagram for features common to several accidents. If they can be linked to the roadway design, remedial measures are devised and improvements made. When such intersections are improved, future accident rates are studied to ensure that the deficiency has been corrected.



Collision diagram

Figure 2

- 7.5.2 Collision analyses of this type frequently lead to standard improvements that are implemented at other intersections to prevent possible accidents.

7.6 *Accident Rates*

- 7.6.1 Accident rates are computed for road sections as, accidents per million vehicle-miles and fatalities per hundred million vehicle-miles. For short road sections, these statistics can be estimated with reasonable accuracy from the number of reported accidents occurring within the section of road and measured traffic counts throughout the year. When accident rates on a section of road exceed a specified limit, the design of the road is studied in an effort to determine any design deficiencies that might be responsible.
- 7.6.2 When accident rates are calculated for road sections, it is possible to carry out statistical analyses to relate the rates to varying geometric design features on different sections. Such analyses have been used to show that wider pavement lanes have lower accident rates than sections of road with narrow lanes. Analyses of this type have also shown that fatality rates may be reduced through the use of flatter side slopes and back slopes, coupled with rounded ditch bottoms.
- 7.6.3 Statistical analyses to relate accident rates to road design features have, however, serious limitations as there are generally not enough road sections to compare the effects of rates of differences in a particular roadway element where all other design features are identical. Hence, an analysis could attribute high accident rates to traffic volume rather than to narrow traffic lanes because, for the sections studied, roads with wide lanes had low volumes and roads with narrow lanes shown high volumes. Statistical analyses of accident rates have provided useful results but, because of the limitations cited, detailed crash investigations are needed to isolate the true causes of accidents.

Recommendations

- 8.1 Although improper driving for the existing environmental conditions is responsible for by far the greatest number of all traffic accidents, the numbers of accidents and fatalities could be reduced by improved roads and operating conditions.
- 8.2 Traffic accident reductions through road improvements could be effected by:
- 8.2.1 Improved accident reports pinpointing accident locations and recording clear, accurate descriptions of the events and conditions together with the probable contributing factors.
- 8.2.2 Improved reporting methods devised through a co-operative effort by all agencies in Canada concerned with the use of this information.
- 8.2.3 Detailed investigations of traffic accidents by teams of specialists representing the sociological, legal, medical and engineering professions to determine the true causes of accidents and personal injuries.

- 8.2.4 Construction of more freeways to carry a higher percentage of the total motor vehicle travel in both rural and urban areas on systems that have been proven to reduce demands upon driver ability to a minimum, and in which accident rates have been proven to be substantially lower.
- 8.2.5 Preparation, adoption and implementation at the earliest possible date of a code of modern uniform rules of the road for Canada.
- 8.2.6 Implementation on all roads and streets of the standards contained in the latest edition of the Manual of Uniform Traffic Control Devices for Canada.
- 8.2.7 Adoption of realistic speed limits and other regulations on all roads and streets.
- 8.2.8 Strict enforcement of rules of the road and the regulations established for particular sections of road and street.

9. References

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HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

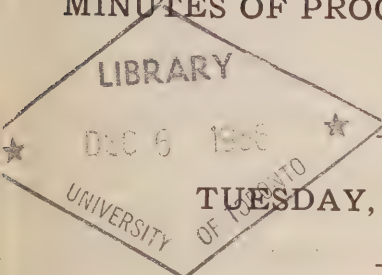
ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 12



TUESDAY, OCTOBER 25, 1966

Respecting the subject-matter of

Bill C-87, An Act to amend the Criminal Code (Impaired Driving)

WITNESSES:

Mr. Robert E. Malkin of Vancouver; and Mr. J. Douglas Tracy
of Little Current, Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Bell (*Carleton*),
Mr. Choquette,
Mr. Chrétien,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Laflamme,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Trudeau,
Mr. Wahn,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of The Committee.

MINUTES OF PROCEEDINGS

TUESDAY, October 25, 1966.

(15)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m., the Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Chrétien, Forest, Joyer, Guay, Honey, MacEwan, Mather, McQuaid, Tolmie, Trudeau (12).

Also in attendance: Mr. Noble, M.P.

In attendance: Mr. Robert E. Malkin of Vancouver; and Mr. J. Douglas Tracy of Little Current, Ontario.

The Chairman introduced Mr. Robert Malkin of Vancouver, who read a statement re Bill C-87.

On motion of Mr. Tolmie, seconded by Mr. Honey,

Resolved,—That documents from the Department of California Highway Patrol (*The Roles of Carbon Monoxide, Alcohol and Drugs in Fatal Single Car Accidents*, and *Alcohol, Drug, and Organic Factor Study*); and an *alcotest*, both submitted by Mr. Malkin, be made exhibits (*see Exhibits 10, and 11 respectively*).

The Committee then proceeded to the questioning of Mr. Malkin.

The Chairman introduced Mr. J. Douglas Tracy who made a brief statement, followed by which the Chairman thanked Mr. Malkin and Mr. Tracy for their great interest in the Committee proceedings.

At 1.10 p.m., the Committee adjourned to Thursday, October 27, 1966 or to the call of the Chair.

Timothy D. Ray,
Clerk of The Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, October 25, 1966.

The CHAIRMAN: Gentlemen, we have a quorum. It is my privilege and pleasure to introduce to you Mr. Robert E. Malkin of Vancouver who has established for himself a continent-wide reputation in the crusade for safer driving.

I told Mr. Malkin that I had read his brief and I thought it was a better introduction than any I could make on his behalf. So, without any further words of mine, Mr. Malkin, we welcome you to this committee. We will be pleased to listen to you and, after you are through, I hope that you will allow the members to address questions to you.

Mr. ROBERT E. MALKIN, Vancouver, B.C.: Thank you, sir.

(Translation)

Mr. Chairman, I am sorry, I do not speak French. I come from Vancouver.

(English)

Mr. Chairman, ladies and gentlemen. If my son were here today I would not be wasting your time on this pyrrhic war. I have done the best I could, in every way possible, to get publicity—and I hate publicity. I have had coloured photographs placed in national papers; there has been an article in *Maclean's*; the *Rotarian* has an article this month in every English-speaking country in the world; several American newspapers including *Parade* which has a circulation of 10 million, have had articles, and there are some 500 press clippings having to do with the subject matter, mostly concerning my campaign. This is what I have done or endeavoured to do to influence public opinion.

You know, I really should shorten this presentation. However, because this may invite confusion and resultant disaster, I will begin at the beginning.

I quote from an editorial from the *Vancouver Daily Province*, not because it concerns me but because it concerns public opinion. This article is dated March 4, 1964:-

"Nothing can bring their son back to life but Mr. and Mrs. Malkin plan to arouse public opinion in California to demand tougher penalties for drinking drivers.

"They intend to seek signatures for a petition to be placed before California Governor Pat Brown.

"If Mr. and Mrs. Malkin are able to arouse California to a crusade against drunken driving, their memorial to their son will be a selfless and enduring one.

"It will also be an example of what can be achieved by men and women who REFUSE to endure passively that which they know demands a

remedy. There is in the grief and determination of these parents a lesson for every one of us."

Gentlemen, it is now 1966, and an answer has been found in California. I feel that we served as catalysts to change the law, to right a wrong.

I quote an editorial from the San Francisco *Examiner*, a Hearst newspaper April 11, 1965:—

"Drunk drivers are the No. 1 killers on California highways. Existing laws fail to cope with them. Indeed the leniency of these laws, and the loopholes in them contribute to the indifference of the chronic, repeat, drunk driver.

"One of every 3 persons killed or injured on California highways in 1964 was the victim of drunk driving. 40,000 accidents were traced to drunk drivers.

"These bills are firm but not harsh. They would not stop all drunk driving. But they would greatly strengthen the hands of law enforcement agencies in reducing it. They should be adopted."

I would like to add that the National Safety Council say that just over half of all auto fatalities (52 per cent) involve liquor. Note, I did not say drunken driving; I said involved liquor. But of this amount, two-thirds are drunk, i.e. about 34 per cent of all fatalities can be charged to our tolerance of drinking and driving.

I give you the only copy of a recent and very good report from California showing that 228 out of 325 of male SINGLE CAR FATALITIES—now this is a special type—involved drivers with .10 per cent or more alcohol. This is known because of the Coroner's report which is, of course, a public document.

I would like to submit this, Mr. Chairman, for your information. It is very well broken down into ages, districts, males, females and so on. You could also get more from Commissioner Crittenden.

On June 20, 1966, the U.S. Supreme Court ruled in the Schmerber Case that "Police taking blood from an objecting motorist suspected of drunk driving does not violate the Federal Constitution" and that "Blood Tests" are reasonable and highly effective in determining the degree of influence of alcohol." My authority is *Time* magazine, and news clippings were sent to me by Governor Brown's office.

President Johnston was quoted in the press earlier this Summer as saying that next to Viet Nam, driving safety is number one on his Federal program. Since just over 50 per cent of auto fatalities concern liquor in various quantities, I think then that we can assume it is of the utmost importance. I admit I am using an American situation here, but I would like to draw another parallel. It also came out in the press this summer that 5,000 fine American boys had been killed in the last two years in Viet Nam; but, what that article did not say was that in the past two years 100,000 people have been killed on American highways—and it is about 10 per cent in Canada extra—and of this 100,000 50,000 involved liquor. My reaction as a father was exactly the same as yours would have been under similar circumstances. Perhaps some of you have already experienced this—if not, I pray you never will. There was a sense of overwhelming loss; a stunned disbelief in the truth that your mind cannot

cept or reject; an end to dreams that you did not know existed until they ended—abruptly ended!

There was a second reaction, and this was my knowledge that this waste of life need never have happened, and that, as a man, I owed a DUTY to myself and to the society in which I live, to do everything within my power to put a stop to it. But what can one man do in this North America of ours in the face of lobbies. This does not apply in Canada so much but, in the United States especially, there are lobbies against compulsory insurance, lobbies against the use of drunkometers or breathalyzers, lobbies against fixed blood alcohol definition, lobbies against mechanical standards or motor vehicle inspections and lobbies against almost anything that is objective by way of control, and perhaps, worst of all, lobbies presented by some members of the bar against anything that might question a man's right to drive drunk, insane, blind or otherwise, which is in some strange way associated with civil liberties. This is true in Canada but, to make my position even more difficult, this incident occurred in the U.S.A., where an almost identical situation exists.

My turning point came one day early in 1964, when I attended a Rotary luncheon in Vancouver and heard Chief Justice Jack Wilson of the B.C. Supreme Court talk on "The Duty of the Citizen Toward the Law". My mind was made up. I felt that spending my time and money this way was a better contribution toward mankind than anything else that I could do in memory of my son, my only child.

I would like to pay tribute to the tremendous help I received as a result of my trusting the advice and confidence of the experts on law, safety, medicine, and last but not least, all those of the news media—and I will never forget this. I was completely ignorant. I knew nothing about publicity. I would like to add particularly that the Canadian Highway Safety Council are fighting very hard in this area, and as a director of the Vancouver Traffic and Safety Council, I have learned to appreciate this fully.

My motivation was not revenge. I was, of course, appalled by the light sentence considering the previous convictions (which were not brought up in court and which I will explain later) and I now began to realize that this was a VAR game.

In his first meeting with me, Governor Brown of California said, "Perhaps our son will not have died in vain." Well, Gentlemen, results have shown that he has not—the law is passed—and I take deep satisfaction in this.

If I now compare California with Canada please take into account that there are similarities; both have a population of roughly 20 millions. California although only 43 per cent of the size of the Province of British Columbia, nevertheless has 11 million vehicles on its highways. Canada has some 7 million only—actually less than 7 million. If we project this, it is reasonable to say that the traffic problems of Canada are perhaps one-third less than those of California at this time. But the auto people tell me that in Vancouver City for instance—and I expect it is the same all over—we can expect an increase of car registration of about 40 per cent by 1970, so by that time probably we in Canada will have the vehicle population that California now has.

The killing rate for 1964 in North America was 24 people per 100,000 population and California has the same national average. By comparison,

Nevada, where liquor and gambling are wide open, kills 48; Connecticut and Rhode Island, next to New York, which had a liquor age limit of 18, got into a mess years ago, tightened their laws and they kill 9 and 11 per 100,000 respectively.

But remember this, last Labour Day weekend in the United States 600 were killed in auto accidents. Now, if we had 10 per cent of the population maybe we should have killed 60, but the cold hard facts are we killed 100. If you take into consideration their car population per capita is higher than ours, we really killed double the number of people, and this whole situation is completely out of control.

If you assume that the figures which the National Safety Council have said are correct, that just over half all fatalities concern liquor, this is something we can do something about. Based on figures given to me by the National Safety Council, the 100 deaths this last Labour Day weekend represents an economic waste of \$17,500,000 in Canada, quite apart from heartbreak.

Let me read in part the message I carried to the California Senate April 20, 1965. I read this, ladies and gentlemen, because really nothing has changed. The situation there is very similar morally.

"I feel that the honor of being invited by your Governor to testify here tonight as your guest is a matter of much importance. First, let me explain why a Canadian came to your country last year to put on a public demonstration. I did so at the request of quite a number of citizens of your state who were themselves unable to do so and I did this entirely at my own expense.

Our two great countries have an almost non-existent border between us, and the peace between us for over 150 years is the envy of the world. Our drunk driving problem is not!

My son, Kit, and his friend John Barth, both graduate students working as Teaching Assistants at Stanford University were returning from the laboratory at Stanford one midnight, when they were killed by a driver who had been drinking heavily for many hours—10 hours.

The offender drove through a red light in a 25 mile zone in Palo Alto at 50 miles per hour—by his own admission. He hit Kit's car broadside or pushing it 50 feet, and then going another 100 feet onto a boulevard where he knocked down a tree.

Curiously enough this boulevard was outside the claims office of the All State Insurance Company where there are 50 people employed. You can judge how they felt about this. This was the second tree to be knocked down on this boulevard.

He then left the scene of the accident and was arrested two hours later due to the courageous efforts of four observant teenagers. The force of this accident broke one of the seat belts.

Here it is. I had it broken later. It broke with 2,050 pounds.

A group of parents who had also suffered similar agonies through the death of their children, formed a committee to call sharp attention to this problem. It was for them—as well as for my son—that I made my pilgrimage through your beautiful state. I tried to carry this emotional

subject to your people effectively and in good taste. I hope, therefore, that this short presentation will be received by you in the same spirit in which it is offered, one of co-operation by you in a hands-across-the-border effort against a common enemy, the CHRONIC DRUNK DRIVER.

Let me give one statistic quickly: the drunk driver kills one person every *thirty-three* minutes in America and Canada collectively.

Now, I just said one in every 20 minutes. I was referring to drinking drivers. This is drunken drivers and there is a difference.

The drunken driver plays no favourites, be his victim in a chauffeur-driven limousine or a Model T Ford.

What happened to my son is not important, except to me. I just don't want it to happen again.

I did not come down to California as a foreigner, saying that your laws were wrong. What I did say and I said it very often was THIS: "This is the law; is it right, is it wrong?" I merely tried to make people *think*.

Under your laws (and Canada's are the same), only a fool would voluntarily take a blood/alcohol test if he had been drinking and driving. I wouldn't.

The Canadian Bar Association (working with the Canadian Medical Association) in March, 1965, recommended to the Minister of Justice that an alcohol level of .08% be enacted into law, and that failure to take a test upon the request of a police officer who has reasonable and probably grounds for believing a person is intoxicated while in charge of a motor vehicle, will result in 6 months suspension of his driving privileges. I feel that the Canadian Bar deserves great credit for the progressive stand which its Executive Committee on Crime has recommended and which has apparently been approved by a majority.

I have never asked for stiffer penalties in law. The courts in your state and my country do not use the maximums they already have. All I have ever asked for is a deterrent to the chronic drunk driver. When the 21 year old man killed my son and his friend (and this was his 12th conviction for drinking or driving misdemeanors) I wondered if there was ENOUGH deterrent to prevent a repetition.

No one is more conscious of civil liberties than I am. If America and Canada set up a limit in law of driving speed which is unfair to some but fair to the majority then, gentlemen, I submit, why should we not set up in law a blood alcohol limit that may be unfair to the habitual drinker who is still drunk at 8 o'clock in the morning but is fair to the majority of the community?

I would like to tell you this. On my committee down in California there were two sets of parents whose daughters were killed between 8:30 and 9 o'clock in the morning on the Bayshore freeway by drunken drivers who had not had a drink that morning since getting out of bed but they were still plastered and went right through the median and hit them head on.

Under the laws of your state and of my country, civil liberties should be equal for everybody. But the liberties of the chronic drunk

driver are more than equal. If a drunk driver kills someone, he can refuse to take a chemical test for alcohol—but his victim cannot. His victim goes to the morgue. Just what is voluntary about the Coroner's report on the alcohol that may be in *his* blood? Is that equal rights?

Just supposing my son had been drinking. Believe me, ladies and gentlemen, that accident happened at midnight on Saturday night and I had a doctor go there—the other parents had—and he said they sure searched those boys for alcohol. Of course, I would too. What would you expect on a Saturday night; especially when the others had liquor all over the place.

Sometimes I wonder just whose rights we are protecting! I have talked to many of your state and municipal traffic policemen, many of whom signed my petition, and they are frustrated by the laws of my country and your state slanted in favor of the chronic drunk driver.

I drink myself nearly every day; I drive a car nearly every day; but I use discretion and personal discipline. I am not against the man who has one, two or three drinks, enjoys his dinner and drives home.

I have here a small bottle purporting to be whiskey. For a person of my weight of 200 pounds this represents .10% alcohol roughly. Ladies and Gentlemen, if I drink this now, would you drive with me in half an hour or in an hour—because in about this time this would represent the bare minimum of alcohol in my blood stream to convict me under .10. Would you insure my car knowing I were in the habit of doing this?

And then I pointed to a couple of senators. I said:

Senator Christensen, as a former Superior Court Judge, would you judge me on this? Senator Petersen, as a former District Attorney, would you prosecute me on this? Would any of you gentlemen, as practising attorneys—and they all were—care to defend me if I had an accident?

Many of you—and this applies to all of us in this room—have relatives and friends who drive the roads of this great state daily. May God forbid that they should meet someone with **THIS MUCH** alcohol in them on a busy street.

From Vancouver, B.C. a Mr. & Mrs. Loftus were both killed in 1959 on the Bayshore Freeway near San Francisco. One son recovered, but the other, then age 7, became an incurable idiot. For four years—it was then four years; it is now longer—this boy has had to wear diapers and use suppositories daily. He was unable to walk, to chew his food, to feed himself. He is at present in Woodlands School outside of Vancouver and will remain there forever. Fortunately, he doesn't know anything and his parents are dead.

In Oakland a young man asked to sign my petition saying that his mother had been killed by a drunk driver two days before and he was on his way to the hospital to visit his father who had been injured in the same accident.

A Lakewood, California, couple came up to me one day. Their 15 year old daughter was killed in 1963. They had collected personally, with no help, 2,800 signatures, a stupendous job.

Ladies and gentlemen, there they are. They go right up and down the street, street after street after street. I got these facts from Governor Brown. My file was this high. This is a fantastic effort on the part of these three parents. People have had enough.

A Long Beach woman approached me with tears in her eyes and her face bearing the angry, purple scars right down one side because of a recent accident. She said her husband was killed and she and her two children were injured badly in an accident caused by a drunk driver.

On Market Street at 5th in San Francisco, another woman came up to me and said, "My husband is a terrible drinker and if this petition will help get him off the road, I'll SURE sign."

Gentlemen, I have here nearly 20,000 signatures, as a symbol from many people, 75 per cent of whom said they had friends or relatives hurt or killed by the drunken driver. They told me to tell you when I went to Sacramento, "We have had enough of the chronic drunk driver, and in the name of justice, please do something soon."

May you think deeply and clearly, with understanding hearts, and search your conscience for what is right and reasonable when you vote on these bills"

This ended my testimony.

The vote was eight to two in favour. It was quarter to twelve midnight when I spoke. Present were seven reporters, two T.V. cameras, with 500 people in the audience. Later, through a form of political gymnastics the bills were defeated in 1965 on a voice vote; but on June 21 this year they passed 23 to 12 on a standing roll call vote.

Even Napa County where the wine comes from, the representative in the Assembly, Mr. Young sponsored the Senate bill on this subject matter. I give you in evidence a few copies of Senate Bill No. 3 for 1966. Very roughly, this gives compulsory tests. Refusal means loss of licence for a period of time and it defines drunkenness and impairedness. I quote an editorial from the Vancouver Sun, March 6, 1965.

ROBERT MALKIN'S CRUSADE

One-man crusades usually are more noteworthy for their curiosity than for their impact. The term itself suggests the fanatical crackpot. Besides, any issue worth fighting for is bound to be the serious concern of not one man but many. But Vancouver's Robert Malkin is no crackpot, and he is far from alone in his campaign against drinking drivers. His plea for scientific tests of impairment, for example, has wide support, ranging from Highways Minister Gaglardi to the Canadian Association of Police Chiefs.

By the happenstance of personal tragedy, Mr. Malkin for 16 months has waged war against the murderous highway drunk with a singleness of purpose which sets him apart from most other highway safety reformers. So that the death of his son in a California car crash might not be in vain, Mr. Malkin has gone to unusual lengths to protect the people of both the U.S. and Canada from similar fate.

If I might, Mr. Chairman, I would like to pass these around, for visual examination, if that is not going too far?

The CHAIRMAN: No, no.

Mr. MALKIN: I continue:

He has trucked his son's wrecked car around California on public display. He has lobbied the federal government.

Actually, I came here in 1964 and saw the Prime Minister and the Minister of Justice.

This week he carried his campaign before the annual meeting of the B.C. Automobile Association. Soon, he will appear before a committee of the California Senate. What will come of Mr. Malkin's efforts remains to be seen. But if scientific impairment tests ever are adopted in Canada and in California, which is a very controversial place, and the deadly drinking-driving combination minimized, it could well be because Robert Malkin, with his dramatic message, caused many men to think.

Please let me quote some medical authorities: Dr. Charles Hine, noted American Toxologist of San Francisco University, who flew to Sacramento to testify with me, noted:

There is an extremely dangerous point where people have a very low alcoholic content of between .04 to .05 per cent—more or less halfway through the second drink is my interpretation of it—and are completely carefree and irresponsible.

I can only compare it to the word "kittinish"; Katzenjammer would be the German word. I cannot think of any other word of describing it but it is crazy.

Later they may or may not become cautious although they have more alcohol; the caution seems to be set in as a subconscious protective device which nature gives us.

I quote Dr. Barney Moscovich, Medical Director of the Alcoholic Foundation of B.C. who reminds us that:

Alcohol seems to give many drunks a kind of *tunnel vision*—like looking down a pair of binoculars—that is seemingly good so far as it goes. A man might be so drunk he can hardly find his keys; in a car, he can drive in a straight line. But, and there is a big but, this tunnel vision has, under this condition, destroyed his peripheral vision so that if anything at all happens to one side, he misses it entirely.

But this is how drunks get home; they are lucky. Dr. Moscovich also feels that the answer is a continuing education of the public, and I agree with him. This will have to be a well planned program so that people will not become enured to it. There must always be something new, a gimmick if you like.

I put my son's car on a truck. That was a gimmick. I don't believe in wrecked car parades. But as long as I was there, this was a gimmick; it made people think.

Two years ago, I bought a postage meter slug for \$11.99 which I persuaded the Postmaster General to use on various machines in Vancouver, Ottawa,

Toronto, Montreal, and so on. It read, "IF YOU DRINK DON'T DRIVE": "SI VOUS BUVEZ NE CONDUISEZ PAS". These electric metering machines handle roughly one million pieces per month—but these ideas must have a continuing originality to be effective.

I quote Dr. Frank Turnbull, in 1965 President of the Canadian Medical Association, who wrote me:

"I think that what you are doing is one of the most important projects for public good in Canada at the present time. I just wish we could provide you with a pictorial description of the neurosurgical ward around Christmas, showing the frightful assortment of badly injured people whose accidents were the direct result of drunk-driving."

In February, 1964—my son was killed November, 1963—the California judge asked by phone through the Vancouver *Sun* for our opinion, as bereaved parents, as to punishment. He wanted us to write a letter to him. This was unheard of, but there it was.

To be fair, we interviewed our senior British Columbia probation officers, assuming the letter might be made public. We wrote the judge that we felt that a sentence of 3-5 years might be reasonable, but that the offender's permit to drive should be suspended for as long as the law allowed. RESULT: The offender got one year in the local county jail farm on each manslaughter charge, concurrent, a net time in jail of 8 months and 2 days, and this was his twelfth conviction at age 21. His right to drive was not suspended, until I went to see the Director of Motor Vehicles in Sacramento, who granted my request immediately until the young man could prove financial responsibility. But since, Tom Bright, the Director also told me that California has one million drivers on the road today without licences, it is questionable whether loss of licence was a deterrent.

When I made my first visit to California, I found an unexpected development taking place. The needless slaughter of these particular two boys had stirred a movement of protest in the Stanford University community. Out of the hundreds of fatalities each year in this Bayshore area around San Francisco, these two deaths had triggered a positive reaction. Some of their friends and I joined them, had started to form an organization called, "ACTION FOR RESPONSIBLE DRIVING."

Other things happened and for those of the press who are here, this is the one paragraph I do not want released for obvious reasons.

One of the Marine Biologists working with the two young men in the same laboratory was so horrified, that she drew up a simple one-page petition which I used to Governor Brown to: "do something to strengthen the present laws to deter the drunken driver".

That's all the petition was. Do something.

I used this petition. This young lady was a nun, Sister Mary Aquinas Nimitz, daughter of Admiral Nimitz, and she worked with us until her order asked her to withdraw.

After the sentence, I went to see the Superior Court judge. I asked him, if, since he had the power to give a sentence of 10 years in San Quentin, if he considered that the net time of 8 months and 2 days was sufficient to deter this offender who had already 11 PREVIOUS convictions. It was then that I discovered

the judge had not been informed of the past drinking or driving record. Some of you know there is certain thinking in law that past records should not come up in the present case. I won't give you his very sympathetic reply. Months later, on a Traffic Sentence Day, I solicited signatures in front of his courthouse and the judge came out to look at the wreck. Walking away and shaking his head he said, "Mr. Malkin, having seen this wreck, I wouldn't blame you for ANY action that you would take." And he continued to shake his head and walk away.

Gentlemen, I am sure that this judge and many others in California have raised their sights on sentences.

A Municipal court judge in Santa Monica, W. Blair Gibbens, famous for sentencing President Kennedy's sister, Mrs. Peter Lawford, to writing reports in a hospital accident ward, asked me to park in front of his court room on sentence day. I did. He had the Marshall clear the court of 100 people, a huge place, who came out and many signed my petition.

Then he invited me, together with the press and TV cameras into his court. He took his robes off and asked me to give a 10 minute speech on safety and moderation. While such behaviour is somewhat untoward in our courts, I can assure you that the vast majority of people there benefited. When I stopped talking they stamped their feet and clapped their hands for about three minutes.

Police throughout have been most courteous, most courteous. In San Francisco, I was allowed to park on Market Street in the NO 4 to 6 ZONE during the traffic rush. I could park on a one-way street facing the wrong way. The sky was the limit. Those who see what devastation is caused by the drunk driver realize that something must be done.

You, ladies and gentlemen, are sophisticated and know that under Sec 224(4) of the Criminal Code of Canada, refusal to take a test cannot be mentioned in court. But what about the less sophisticated? What about the poor slob? Surely the present halfway measures should be amended and the test made either compulsory or unavailable to ALL. Let's even it up.

Drunk drivers are in the great minority, but the findings of the International Association of Chiefs of Police confirm that they are deadly. Shouldn't the 20 million in Canada be protected from them; after all they kill about 200 people per month in Canada. Keeping the drunks off the road is a protection of OUR rights. Does a man have "Rights" when he is drinking and driving or is this simply an abuse of privilege, a rejection of responsibility?

For those who object to the compulsory test, let us look at the law in the U.K. Under the Road Traffic Act, 1962, 10 & 11 Elizabeth 2, Chapter 59(2)—I am sorry I do not have a copy, but I know there are many here in Ottawa—the refusal of an alleged offender to take a test may be mentioned in court as evidence on a charge of unfitness to drive. Under Sec 224(4) in Canada, it may not.

I can tell you that the liquor industry are concerned that the public might turn against them if some curbs are not established. The Vice-President of the House of Seagram sent me many ads indicating the amount of money spent on *moderation* in this respect. One of the strong points in my campaign was that I said 100 times on radio and TV that I was not an abstainer and I

did not attack the industry. If I had, of course, opposing forces would have swamped me in California. Actually, I did hurt part of the industry but I am sure that this group was responsible for our defeat in 1965 in a voice vote in California. The small bar owners were hurt. You see, California does not have public transportation. The auto and the airplane are public transportation. So, by driving people out of their cars where a bar can only be approached either on foot or by private car, I drove them into their homes—and this is what this law will do to a degree—and the bars lost business. I cannot help this. What I am asking for is simply a law to deter the drunken driver. Both automobiles and alcohol are here to stay and people must learn that moderation is the factor in safe driving. It is a question of a law that is good for the vast majority. I quote one last editorial from the San Francisco Examiner, February 20, 1966.

“Governor Brown has been as good as his word, by including an “implied consent” anti-drunk driving bill in his special session call. This was the protective legislation the Senate treated so cavalierly in the last session in the face of strong demonstration of the public’s needs and wishes. The implied consent concept is that issuance of a driver’s licence would carry the condition that the motorist “shall be deemed to have given his consent” to a chemical sobriety blood test.

That is what we have in Saskatchewan.

A companion bill last year would have established an alcoholic blood content of .10 per cent for legal presumption of intoxication definition.

Both bills were by Senator Randolph Collier of Yreka.

This is the man I backed.

We hoped and predicted they would be back again. Now they are, with the Governor’s approval. We hope they pass. If they don’t, we will expect them back *again and again until they do*. We take this position because drunk driving annually kills far too many Californians. The implied consent provision is in the laws of many states. It has been repeatedly upheld in the courts. The chemical blood test is objectionable because of supposed invasion of privacy and personal privilege. Actually it is a scientific means of determining the fact and degree of drunkenness—an essential deterrent to drunk driving. Who would argue that drunk drivers can safely or sensibly be allowed on California highways? Why should the legislature hold back from a measure for which there is such **CLEAR PUBLIC NEED?**”

Ladies and gentlemen, the same applies right here in Canada.

Speaking of rights, because I am very conscious of this, the word “RIGHT” is open to many interpretations. We must take a driving test to get a licence; we must take an eye test before the driving test. In many places we must take a blood test to get a marriage licence; California is one. Nobody asks us to drive a car; nobody asks us to get married—you can live in sin. Yet all of these restrictions are a certain loss of rights, but we accept them. Many other personal privileges have been curbed in the interest of law and order without an outcry because they are for the good of the vast majority. Then I submit,

why should we not establish a law, a blood alcohol factor that is fair to the majority?

I have read in the Canadian press that some lawyers and citizens feel that the police might abuse a compulsory test law. Such comments are studies in contradiction; if the police can abuse the enforcement of one law, they can abuse all of them. Does such specious argument propose that we eliminate all legislative traffic controls in order to protect ourselves from the police whom we employ to protect us? I certainly do not want a police state, but I still feel that the greatest deterrent to the drunken driver is the man with the badge. Why not give him the tools to deter? We honour his uniform; we take his gun away. We should not depend on our insurance companies to wield a bull whip through higher insurance rates. As it is now, the guilty driver suffers most as an accident repeater by increased premium fees, and this is in fact the ONLY sure and consistent penalty that exists.

As I said, in 1965 we were unsuccessful in California, but the Senate did do something. Commissioner Crittenden, a staunch supporter had, at the time, only 2500 traffic police in his California State Highway Patrol for 11 million vehicles. The future is showing up for all of us, you know. Recent drinking-driving statistics released, which I have given you, Mr. Chairman, are so startling that this force will be more than doubled in strength to 6,000. The plan for financing is simple. By 1968, the vehicle licence plates will be raised a total of \$3 per year per set, which will raise \$35 million, but enough for another 3500 men and equipment. This is a deterrent—and this is outside the cities, mind you. On the other hand, in Vancouver City, during the last 10 years, we have reduced our traffic patrolmen by 20%, and the result is our death rate in 10 years up is 40%.

The country looks to the Bar to give support to the law. I think that the Canadian Bar Association's Committee on Crime is to be congratulated for the strong stand taken in 1965. But I feel that somehow its general membership might be said to have lost touch and forgotten—and I have been told this by the hundreds of thousands of people I have talked to—how much the man in the street depends on it to carry out its trust as officers of the court. The Canadian Bar Association is our watchdog.

Some lawyers at the 1965 Bar meeting in Toronto were quoted in the press as saying that in their opinion loss of licence is a sufficient deterrent. I disagree, at least where B.C. is concerned. In B.C. it is easier to get a driver's licence than it is to get a card for the Vancouver Public Library where I am required to give the name of three sponsors. But in British Columbia, if you look to be over 21, not one scrap of identification is required. I told our Attorney General, Hon. Robert Bonner—who I saw at breakfast this morning—last month, that I could have another licence in 15 minutes. I would have to perjure myself but, I would change my name from Malkin to Molkin and I would change my birth date by one day. I could leave the same address and never be caught. Perhaps we should do as California and have at least a passport photo attached. This can hardly be regarded as a loss of liberty.

We must have a fixed definition for impairment. There is no excuse for not doing so. Let me quote Coroner Glen McDonald of Vancouver, a past president

of the Coroners Association of America and a member of the bar, in a recent article:

"He was unsteady on his feet," the arresting officer testified. "Well, your worship, I pulled a tendon when I tripped over our cat on the way to the car." Case dismissed.

"He smelled of alcohol," said the officer. "It wasn't alcohol. You see, I have a loose denture and I'd been eating blue cheese in the press gallery." Case dismissed.

"His eyes were blurred." "I'm a non-smoker and I sat through two shows at a night club between cigar smokers." Case dismissed.

"He failed to pick coins up off the floor." "It wasn't my money your worship." Case dismissed.

Ladies and gentlemen, why, in an age where crime detection has substituted the comparison microscope and chemical analyses for the rack and the thumbscrew, are we attempting to resolve the alcohol-transport conflict by such primitive means? The conflict is hardly new—only the scientific means of resolving it.

When Noah's grapes fermented into wine which was consumed by the captain of the ark, there was no breathalyzer with which to evaluate the hazard. Some had no alcometer to test its tiddly charioteers and the pony express people were without a drunkometer to curb the odd rider who bit the dust after nothing more lethal than a few shots of snake bite remedy. But now we have these instruments and with the super-highways and the high speed automobile, the carnage is becoming intolerable.

Society is not, however, prepared to pay the price for absolute highway safety, which would require criminal proceedings against any drivers with the slightest traces of alcohol in their systems, such as is so in some European countries. We are prepared to tolerate some alcohol-induced decrement in driving skill. Driving skill can't be scientifically measured, but the blood-alcohol factor as an *indicator* of driving skill can be scientifically measured, and measured very accurately indeed.

Such instruments as those already mentioned are probably more accurate than the gasoline pump gauge, police radar and time-distance traps, and certainly more accurate than the weary police officer giving his ritualistic recounting of the "facts" from the witness stand.

But on and on it goes, the blindfolded lady of justice trying to serve a public which is prepared to accept as justice a magistrate's guess tinged with the milk of human kindness or a game of wits (a shell game of delusion and deceit) between the prosecutor and defence counsel. But science offers no guess and no kindness and it doesn't play games. It says, "this driver had a blood-alcohol factor of X per cent; do with it as you will."

A new law has been passed late this spring in British Columbia which will be effective this fall. I checked this this morning with the Attorney General. To quote the Attorney General, Mr. Bonner, "Its purpose is to get the drunks off the road". It is a unique approach made by him, to an unpopular and controversial subject. This subject is really a Federal problem—that is why I am here—but this is the law to be: If a policeman suspects a driver of having

alcohol in his system, he may take away his licence on the spot if the driver refuses to take a blood-alcohol test at the scene when requested. This licence is taken away for a period not exceeding 24 hours, but may be returned almost immediately. The approach is one of *prevention, not punishment*. It is a very delicate one.

The B.C. Government is now looking into the question of a small instrument about to be used in the U.K. I submit here, Mr. Chairman the alco test. Now, this is one of many. It is like fish hooks; they are made all over the place. This one happens to be made in Germany. They are also made in California and Japan, to my knowledge. This is roughly what happens. This is not admissible as evidence into court but I suggest that it may be a crutch for the policeman.

Here is a little glass tube with some chemicals inside. It is sealed. You have to break off the two ends and you insert one end into this balloon. You take a nipple which is hermetically sealed and you jam it on the other side and get the drunk to blow into this. Now, this is of a certain size, it isn't a balloon—it just blows up that big. The idea is to measure quantity because if it was twice that big it would throw this all out of kilter.

Now, the officer, say, in this British Columbia case has an alleged suspected drunk offender; if he can get him to blow into this, this will show (a) this man is drunk or (b) this man is sober—and there is a small place in between where he is marginal. It will not hold weight in court but it takes the policeman off the hook for being judge and jury, which I feel very strongly about. I think this is a good thing.

The British government—I was there again in June and I spent two hours with the Under-Secretary of the home office and another two with the Department of Transport—showed me this. I submit this, Mr. Chairman, as an idea. It does not hold water in court, and I want this clearly understood; nor am I sponsoring this as an individual item, because they are made all over the place. But, it may be a very good thing for the police officer who is not sure of himself. The important advantage is it relieves the policeman of being judge and jury; the instrument tells the officer whether or not a proper test is warranted.

Let me quote from the 1960 report of the Criminal Law Section sent to me in 1964 by the then Minister of Justice, Guy Favreau, "The Commissioners had considered the general question in 1955, 1957 and 1958 and were then of the view that the time had not yet arrived for the enactment of a standard test for intoxication. Their views having remained unchanged, the Commissioner's recommend no action".

On October 1, 1964, I talked to senior civil servants on the deputy minister level in Ottawa. They told me frankly they did not think Canada would enact legislation on definition of the amount of alcohol, nor a compulsory test. If this is the attitude of these senior officials, the Minister of Justice can do little about it, but I do hope you gentlemen will. *The climate of public thinking has now changed.*

The Hon. Guy Favreau, as Minister of Justice went on a national hook-up of TV with me in 1964 to damn the drunken driver. He told me his own son then 17, was hit but not hurt by a drunk in 1963.

I have here my only copy of the new road safety law (U. K.)—not to be confused with the road traffic act I mentioned earlier—printed August 10, 1966

together with a synopsis—by Mr. G. Baker, the Under Secretary of the Home Office on Horsebury Road, London which I submit, Mr. Chairman.

I hope that the British approach, which is very good, will be taken into account by this Committee. It is the work of many years in a country which has the most moderate approach to the alcohol-transport problem. I wish to draw to your attention the *blood-alcohol limit* of .08% here. This bill is designed to give the driver the incentive to not drink and drive; it gives him the incentive to pull off the road and stop driving if he realizes he ought not to be driving. This attitude is most important.

I will not go into any detail of the limits of other European countries, as I believe you are already well-informed on this. It is to the point, however, that in Germany, a driver may lose his permit to drive for life under special circumstances on the first offence.

What must we have in law? First, simply define intoxication. How can a man be convicted fairly if there is no definition? In fact *definition* may clear a man who has had a drink, but as a result of injuries appears to be under the influence. And if, as some claim, it is unfair to a few heavy drinkers, racing drivers and the like, let it be. Laws are made for people, not individuals. What about the unfairness of the speed limit laws to the racing drivers such as Stirling Moss, or even our highways minister from British Columbia, Mr. Lagliardi, but fair to the vast majority.

Under Sec. 224(4), refusal may not be mentioned. The result is, in many cases, where a charge of drunkenness might be difficult to prove, our police simply choose an alternate charge to ensure that the offender will suffer for his offence. This is why so many of the present figures on drunk and impaired driving are much lower than the facts, the police just don't bother and I don't blame these frustrated men a bit.

The law covering drunken driving must not be a Draconic or cruel law. I do not want a pyrrhic victory. I want a law that is fair and reasonable, to protect the rights of the rest of the citizens of Canada, a law that will be looked up to by other countries who will say, "Well, Canada may have been the last of the large nations to act, but she did a good job." We have a good many precedents, you know.

I know that in its way my effort has encouraged the police, medical, legal and safety people to feel that they are not alone; it has also caused some judges and magistrates, particularly in California, to raise their sights on sentences.

It has certainly caused many people to be more careful; others to leave that most lethal tranquilizer before they drive and arrive safely. I have many friends in Vancouver now who used to drive home. Now, they take a taxi. A taxi fare of \$2.50 is cheap.

In closing, I would like to quote from an article I wrote for the English language edition of the *Rotarian* International of October, 1966, which was done a year ago:

"We can stiffen our laws and everyone must do his part. It is up to you; either we are going to rule our roads with common sense or the drunks will do it for us—without common sense. Take your choice, if you think there is one."

I ask but for two items: (1) Definition, (2) A compulsory test—and that is all.

During my presentation, 3 people have been killed in North America in auto accidents where liquor is involved.

I have a short demonstration here which will shock you—it shocked me. I suspected that this would happen. I have been saying, as I said in California, “With this much liquor”—and this would be .10. So I went to the Vancouver police station and in front of the city analyst and three technicians and just so we would not have any problem I had a Negro, a Japanese and two Occidentals—I took six ounces out of this mickey, which is 12 ounces as you know, so half of it is there. I took the six ounces into the police station and I mixed it with 12 ounces of water. This is a strong drink, but it is not all that strong. It is, however, stronger than ordinary drinks, because I didn’t have all that much time. I mixed it—alcohol is an instantaneous mix as many of you know—and I started my first test.

Now, these two tests were done on different days but I had the same lunch; it was the same day of the week; I had the same degree of tiredness; I had the same time between what I had eaten and I had the same breakfast, so it was as close as I as a layman could make it. I had six ounces of rye and 12 ounces of water, which made 18 ounces. That gave me three six-ounce glasses, which I drank. The first I drank in ten minutes; the second in ten minutes and the third in ten minutes. Under breathalyzer rules you must wait 15 minutes from your last drink. You may not smoke; you may not touch any liquor; you may not gargle any Listerine; you may not have a glass of water—nothing. I waited and after 15 minutes I took a breathalyzer test and my test showed .095. I waited another 15 minutes which made 30 minutes and my test showed .09 per cent. In 45 minutes I had dropped again to .08 in one hour it levelled off at .08, and from there it levelled off. From those three glasses—and I was stewed; 15 minutes, .095; 30 minutes, .09; 45 minutes, .08; one hour .08 and levelled off.

I went in on another day and I took the rest of the bottle, the other six ounces, and I quaffed it straight—no water, and I waited 15 minutes. In 15 minutes I was .03 per cent versus .095. This was taken with no water. Another 15 minutes, .03, .03, .03. An hour and a half after, at four thirty, .03. In both cases, because I have a curious mind, I took a blood alcohol test from the venous blood of my vein and it hurt. Those police needles are dull—and I have an answer to that too. The blood alcohol test confirmed the level of the breathalyzer in both cases. Just to be certain I was right I used two breathalyzer machines. Now, this shocked the heck out of me because if I were a drunk or an experienced drinker, I would not use a 26-ounce bottle because rattling around in a car it is hard to hide from a policeman. It might break and it is very hard to hold up; you might break your teeth on it. But a mickey is another story; it fits in my pocket. Now, I might well drink 12 ounces if I was an experienced drinker very quickly. Would you drive with me? Twelve ounces, under these circumstances, would only give me .06. The purpose of bringing this test to you is merely to say I know—and I have given a lot of thought to this—that the argument of .08 per cent is too low. But what about .06 in this case?

I have a letter from Dr. Ward Smith—I have not the letter here, and I apologize for it—who has testified before this committee, and he has said he has come across cases like this. This is not extraordinary. It might be my metabolism, but I am convinced that the majority of us in this room could carry out these two tests and have the same thing happen. I am convinced of this. I learned from the British Medical Association this summer that if you not only use a mixer of water, but if you use a fizzy mixture such as ginger ale or soda, it will enter your system faster still. I have not run a test on that because I have not enough in this test. I feel that we should have, above all, a forensic clinic—that is a medical legal clinic—on a federal basis with biochemical attributes. I think this is absolutely necessary.

Such a clinic with biochemical attributes would find out the one thing that really puzzles me and the one thing I have done a lot of soul-searching on, and that is why liquor affects you differently than it does me—or you, or you. I feel that a forensic clinic would do a tremendous amount. That is the end of my presentation, Mr. Chairman.

The CHAIRMAN: Thank you very much, Mr. Malkin.

Are there any questions members would like to ask Mr. Malkin at this stage?

Mr. HONEY: Mr. Chairman, I want to congratulate you, Mr. Malkin, on your brief. I think it is very impressive, perhaps one of the most impressive ones we have received from the standpoint of informality, and to indicate how action can be obtained when a citizen like yourself decides that he has a duty to the public.

I wonder whether you have gone any further into attempts to reconcile our experiments, which you have just indicated to us, with the evidence and the writings of some of the more professional people, if I can use that terminology, who have indicated to this committee and in their writings that the breathalyzer test and the blood alcohol test is almost infallible in determining the amount of alcohol in the blood, and some of the evidence which we have had before this committee indicates that this is an almost absolute test. But the experiments you have related to us indicate we would have to look at the previous evidence with a great deal of skepticism.

Mr. MALKIN: Mr. Chairman, may I answer that question. Dr. Ward Smith admits this can happen. Speaking of the breathalyzer, I am convinced it is quite accurate, but I remind you that no machine is infallible. I am sure one of us in this room is going to have his battery go dead and his car will not start within the next thirty days. I will say this about the breathalyzer. I have seen it fail; the magnet stuck—and I watched this happen. But, in such a case it errs in favour of the accused. I saw this happen. I can name the man it happened to. There were a great many people there. A second breathalyzer was brought in. This can happen. It does not happen very often but I assure you, and I am sure you can find this out, it errs in favour of the accused.

Getting back to this, the reason that this does not go into the blood stream is because the pylorus muscle in our stomach gets very irritated when you pour straight alcohol on it and it tightens up and then only a little bit comes out. I gave assurance in a letter which I can hand to you, Mr. Chairman, from Dr. Ward Smith, saying that this does occur. There is nothing wrong with the

breathalyzer because, you see, this was not only a breathalyzer test but this was a venous blood test out of the vein of my right arm.

Mr. HONEY: But in the two tests, sir, that you related to us—and most of us here have had some experience with alcohol—how were you feeling after.

Mr. MALKIN: Mr. Honey, I will tell you something; it is no fun drinking with four professional goons looking at you. I would say, contrary to what most of you think, it was about a saw-off as to which made me feel more intoxicated. But I honestly believe that once the first ten minutes was over, this test with the water made me feel less like driving a car.

Mr. HONEY: There was a relationship between the way you felt and the amount of alcohol in the blood as indicated by the tests?

Mr. MALKIN: Yes. I can only tell you that the tests are scientific and they do not lie. I mean these tests concurred with each other—that is, the blood alcohol and the breathalyzer. I did not have a urine test. I could have, but I was quite happy with these.

Mr. HONEY: Relatively speaking, you were in a better condition to drive after the straight rye than after the rye mixed with water.

Mr. MALKIN: It wore off faster.

Mr. HONEY: The tests were relatively accurate in the indication of your ability?

Mr. MALKIN: In this sense, yes. While I am on this, may I say I feel there is good and bad in all laws, and one thing I like about the California law is the accused has the choice of test: blood, breath or urine—a choice of weapons in this sense. Now, this is a double-edged sword. What are you going to do in some remote place where there is only the local constable?

Now, in England for many years they have only had a urine test and the sample is put into two bottles which are sealed. I went to Old Bailey one day when they forgot to seal it and you should have seen the difference in the commercial reading. One bit is given to the alleged offender and the other is kept in the hands of the police, but they are sealed. Sealed urine will keep in the same condition for a long, long time and it can be mailed to a commercial laboratory. What are you going to do? We must have this law fair to everybody. I think there should be an "out". I am sure that northern Ontario and Quebec are just as wild as northern British Columbia. You cannot—and do not let anyone kid you—have a breathalyzer kept in the back of a police car and the police dogs licking it or any other thing like this. This is a delicate machine and it must be handled according to the set list of instructions which must be obeyed. I do not feel that this machine should leave, but let the experts tell you. It is my opinion, and from what I have been told by police authorities, you should not horse around.

The CHAIRMAN: Mr. Mather.

Mr. MATHER: Mr. Chairman, I too was very impressed with Mr. Malkin's presentation, and I am sure all members here were impressed. As a sponsor of a bill which, if endorsed, would provide a basis for a mandatory test, I am interested particularly in what he says with regard to the American legal situation. Would you say, Mr. Malkin, with your knowledge of United States

reaction to compulsory tests for drinking drivers, that this type of legislation is gaining ground and becoming more established in the United States in one form or another?

Mr. MALKIN: Very much. Mind you, California is a most controversial place. There is a new religious group on every corner and there is somebody with a petition on every other corner. Do not forget that in the United States crime is a state, not a federal, problem, so every state has their crime laws. But it is gaining ground tremendously. I cannot give you, because it keeps changing, the exact number of states that have implied consent but I have a feeling it is now up to 38. Anyway, it is gaining ground tremendously and it is, believe me, only a matter of time because, with the economic cost of each death at \$175,000, which is \$35 million a month in Canada for accident fatalities where liquor is concerned, they do not let it go forever, civil liberties or not; it just takes a long time. To be quite frank, I was amazed to see this go through in California; the lobbying against me was fantastic. But, let me tell you, in my opinion the women put this over. After all, they bear the children. The women, I think, swung the vote on this. I may have been a catalyst to expose something. If I had been in California, it never would have gone over. I was a Canadian, a foreigner. I had a foreign licence plate, a British Columbia licence plate. I think his is going tremendously.

Mr. MATHER: Mr. Chairman, those of us who are particularly concerned about doing something about this problem in Canada should relate as quickly as we can to the ladies to see if we can gain further support in this.

Mr. MALKIN: I could not agree more, and I am dead serious about this.

The CHAIRMAN: Mr. Tolmie is next and then Mr. MacEwan.

Mr. TOLMIE: Mr. Chairman, Mr. Malkin made a strong point on page 16 of his brief that an increased number of traffic policemen would certainly curtail drunk driving and driving while one's ability is impaired. He also mentioned his plan where vehicle licence plates fees would be raised. In this case you mentioned \$3 per set.

Mr. MALKIN: Yes.

Mr. TOLMIE: You also mentioned that in Vancouver City, during the last 10 years, traffic policemen have been reduced by 20 per cent, and the result was that in 1966 there was a 40 per cent rise in the death rate. If you feel that this is such a strong and effective way to curtail this type of traffic death, have you considered making representations to our provincial governments along these lines?

Mr. MALKIN: Yes, and I already have to our British Columbia government. The rest of the provincial governments hardly know I exist although the attorneys general and the premiers are all going to get a copy of the briefs. But certainly I can tell you that in British Columbia the number of traffic policemen on the freeways and highways is being increased, because this is the only thing that has put fear as a deterrent. It is not the right comparison but, ever since my mother said to me, "Robert, if you take another cookie from the cookie jar, you get a licking", I understood this. But it is being done; it is being increased. It is only a matter of money, sir.

Mr. TOLMIE: You mentioned on page 17 certain examples where the accused got off, ostensibly, on very flimsy excuses. Now, it has been my experience in my particular area that it is just the opposite, that if a policeman gives evidence in court and states the man was unsteady on his feet, his speech was blurred, and so on it is almost an automatic conviction. There has been a recent situation where a magistrate has refused to convict an accused on the evidence of one policeman with regard to his impairment. I feel that this perhaps points out the situation that you were trying to explain, that the degree of convictions varies with the individual magistrate and hence there are inconsistent results based perhaps on the same facts and circumstances. Your position, as I understand it, is that this breathalyzer test or the blood test is an objective test and this will supplant the subjective judgment of the magistrates which could vary upon their own background experience.

Mr. MALKIN: That is exactly what I mean, Mr. Tolmie, the magistrate's guess and the milk of human kindness. Why should we not have a scientific test and then let the law take its course. But this is fair to the man who has had a good stiff drink—he reeks of it—and has had an accident that has impaired him, although it was not his fault. He had not enough liquor in his blood but if he had bad luck and got up against a stiff magistrate, he might have an unfortunate ruling. Does that answer it?

Mr. TOLMIE: Yes.

Mr. MACEWAN: Mr. Malkin, could you just give us a few more details on the actual bill or bills that were passed in California. I take it, from page 14, they were probably twofold: first, the implied consent to take the test and, secondly, a bill to establish the percentage of alcoholic content.

Mr. MALKIN: Yes. In California, it was watered down a bit. They made drunkenness .15. They increased it from .10 to .15 per cent or 150 milligrams, and they made impairedness at .10. I personally feel it is much easier to just have one level and let it go—get the garbage out of the way and make it simple.

Now, is to implied consent, you understand that this means that if you take out a licence you give your consent that you will take a test when requested by a policeman who has reasonable and probable grounds to suspect that you have alcohol of some quantity in your system. So, in effect, this means a compulsory test.

The alleged offender has 15 days to go before the board and fight this, but this is a terrible complication in law which I think they will have to wipe out because it will be impractical; it will clog the courts. I think it is much better if we keep it simple.

Mr. MACEWAN: I note on page 20 of your brief you stated that in the United Kingdom they set the blood alcohol limit at .08.

Mr. MALKIN: Right.

Mr. MACEWAN: You said before that you believe that instead of the two criteria setting the intoxication impairment there should be one only.

Mr. MALKIN: That is my feeling, yes.

Mr. MACEWAN: If this was done by way of amendment in this country, what do you think, in your opinion, should be the test set?

Mr. MALKIN: Well, I am a layman and I have always ducked this by saying I could not care less if they make it .25 per cent because the drunk cannot count. I am sure that the professionals in this business, the medical people and the legal people, will know at what level to set it. Britain has .08; some American states have .10; some have .08, and I think some have .15. My personal opinion is that it should be .08. Look at the rate it drained out of me; in half an hour I went down from .095 down to .08. It burned up. So, if the worse comes to the worse, it really comes down out of you there.

I am sorry I cannot be of more help to you; perhaps I should take a position and say it ought to be this. But, I feel that is up to you. You have the witnesses. If you said ".08 or .10; we do not know which", I would say to you, flip a coin. I hope I am not weakening the whole case and confusing you by saying this, but the cold hard facts are that if we have a limit in law it will deter the drunken driver. This is all I have ever been after.

Mr. MACEWAN: Would you say, Mr. Malkin, in summing up, that first we want a definition set and some compulsory test?

Mr. MALKIN: That is right.

Mr. MACEWAN: Thank you.

Mr. MALKIN: Thank you, Mr. MacEwan.

Mr. NOBLE: Mr. Chairman, I am wondering if Mr. Malkin could tell us what a modern, efficient breath testing machine would be worth?

Mr. MALKIN: \$5,000, for the sake of argument.

Mr. NOBLE: This brings up a certain doubt in my mind. You said it would not be feasible for a policeman to carry this machine in his car. If this is so, it would necessitate having these breathalyzer machines available in a good many locations along the highway because, as you indicate, it is important to take these tests as soon as possible if you are to get a conviction. There would be a tremendous cost involved in having these \$5,000 machines available every 10 miles or so on our highways.

Mr. MALKIN: Well, Mr. Noble, in the interest of safety, I would rather let a few go through because if they get arrested and they get away with it by .01, they have had a warning, they know it and they are scared stiff. If you had these things dotted along the freeway, fine; but, take it from me, if they are not kept in a fairly dustproof place you are going to lose out on accuracy and it is again going to upset all of us. You know, a laboratory should be fairly clean to be accurate and this is most important. I would rather let a few drunks get away. Does that answer the question?

Mr. NOBLE: The only thing that worries me is the lapse of time from where the policeman picks a drunk up and gets him to a place to be tested.

Mr. MALKIN: Mr. Noble, this is a double-edged sword; it could go both ways. Maybe he has just taken a packet. Now, let me put it this way. If he had taken a packet straight—and we know by this it is going to keep him low—I would bet, if he took a lot of water to try to kill this, it would increase it because the pylorus muscle will let it all fly through.

An hon. MEMBER: You had better not make that common knowledge.

Mr. MALKIN: I have; I have said it on television many times.

Mr. MATHER: Mr. Chairman, a previous witness—I think it was Mr. Ward Smith—answered your question in some detail when he said how the breathalyzer works in Ontario.

The CHAIRMAN: Are there any further questions? We have Mr. Tracy from Little Current. He was particularly anxious to be here the same day as Mr. Malkin. I know that our time is getting pretty close to one o'clock, but I do not think Mr. Tracy will take too long. Would you come up, Mr. Tracy.

Mr. Tracy, I will forgo the introduction; you can introduce yourself.

Mr. J. DOUGLAS TRACY (*Little Current, Ontario*): My name is Doug Tracy. I come from Little Current. We also regard it as the largest fresh water island in the world, but we do have our problems there too.

I bring the feelings of many drivers that wish to rid the fear of being hit by a drinking driver, as we believe the drivers have a perfect right to drive on the highway in safety if they have paid the vehicle licence, gas taxes, and so on, and obey the laws. For any infringement of this written or unwritten rule, the drivers should be taken off the road. The innocent should be protected, not the guilty.

I am sure you gentlemen want to learn all the facts about such an important step in Canada's history. Mr. J. Wadsworth's research findings in his technical note No. 3, written for the National Research Council of Canada, deals with this subject very well, and would prove to anyone who has any doubts of what is really happening in this field—it would be wise to read it. It has been proven that alcohol is the major cause of automobile accidents and 50 per cent of highway deaths. My knowledge in this field is based on first hand knowledge and the above figures certainly are true—as our district Ambulance driver and Funeral Director I am one of the first on the scene. As you arrive one first sees the red light of the police car and then the scene of confusion: glass on the road; one or two cars on either side; people lying on the ground covered with blankets or coats some kind passing motorist has lent; someone trapped in the car, sobbing or crying but wondering how the other people are; some walking around in a state of shock wondering how this could ever happen to them. Generally, beer or liquor bottles are broken in or out of the car and it smells strong of the odour. Usually the driver that is known to have been driving and drinking gets off with the least injury. Then comes the task of lifting the injured onto the stretchers. This is where the onlookers—and I must give credit to them—will help so the patient can be lifted level in fear of back injury, even though it means getting blood on their hands and maybe their clothes, which does not come out easily.

The doctors have quite a task ahead in getting the person well again. And in the 100 per cent I get of the 50 per cent figure I have to admit I usually have quite a task ahead in making the body presentable. This is what the doctors and myself could do without. Gentlemen, by having the Compulsory Breathalyzer Test, this will prevent the needless slaughter on our highways. I would like to suggest that the blood test, as taken by a doctor, be done for all drivers involved in all cases where there is injury or death. The innocent person has nothing to lose by giving a test; the guilty has. Is this why such an important amendment is not being passed?

Gentlemen, a wonderful way to start our important year of 1967 would be to provide safety in this field for our Canadian people across the nation, and especially those travelling to and from Expo 67. The public want it. Thank you.

The CHAIRMAN: Thank you. I think, Mr. Tracy, you should have probably told them not only have you been first hand on the scene but that you are also a funeral director.

Does anyone wish to ask any questions of Mr. Tracy?

Mr. HONEY: Do you take a drink, Mr. Tracy? You are not a teetotaler?

Mr. TRACY: Yes, I do. I am not a teetotaler.

Mr. NOBLE: Mr. Chairman, not being a member of the committee, I am wondering if there are any extra copies of Mr. Malkin's brief?

The CHAIRMAN: I think so. That, gentlemen, concludes the presentation of evidence. I think we should ask Mr. Malkin which one of these he thinks we should have as exhibits. We have Senate Bill No. 3 already.

Mr. MALKIN: This California one is very important. It is extremely well done.

The CHAIRMAN: It is entitled "The roles of carbon monoxide, alcohol and drugs in fatal single car accidents" together with some related material.

We have this safety law of the United Kingdom. What about this alco test?

Mr. MALKIN: I would like you to have it, if there is room for it in the file because I would like the committee to have available such a gimmick, if you like, or a crutch for the policeman.

I know that Mr. Bonner is thinking strongly about using one of these. They have not just made up their minds which one. I know that the United Kingdom will have this Road Safety Act in effect not later than June of 1967—they have given this to me as absolute—and that they will use such a crutch to put the policeman in the position, does he go ahead or does he let the man off with a warning.

The CHAIRMAN: May I have a motion that the documents that I have referred to be made exhibits to today's proceedings?

Mr. TOLMIE: I move that the documents mentioned be made exhibits to today's proceedings.

Mr. HONEY: I second the motion.

Motion agreed to.

Mr. TRACY: May I say Mr. Chairman that any exhibits I could bring would not be presentable.

The CHAIRMAN: At our meeting on Thursday, Mr. Ron Basford will be making his statement on his notice of motion relating to the removal of insurance vending machines from airports. A lawyer from Toronto, Mr. Anthony Bazos, through Mr. Reid Scott, a member of the committee, has indicated that he wants to appear before the committee. I believe he will be appearing

more or less in the capacity of a defence counsel, against the breathalyzer test. Our principle is to hear both sides of the problem and we will be having those two gentlemen.

In conclusion, Mr. Malkin and Mr. Tracy, we wish to thank you most sincerely for your appearance here today. You and Mr. Malkin, as I have stated, have made a distinguished contribution to the subject matter. Mr. Tracy has come here to express the view of the average Canadian citizen.

We wish to thank you both most sincerely for your attendance.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

THURSDAY, OCTOBER 27, 1966

Respecting the subject-matter of

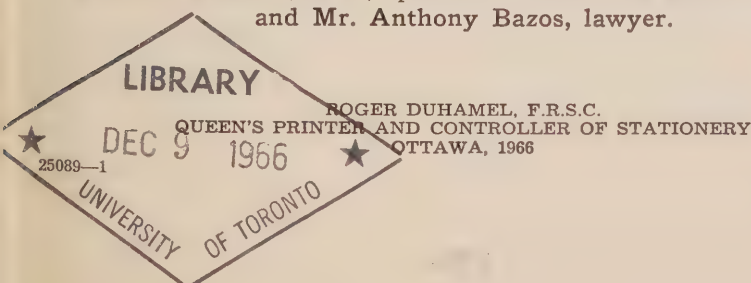
Bill C-87, An Act to amend the Criminal Code (Impaired Driving)

and

Private Members' Notice of Motion Number 32.

WITNESSES:

Mr. Ron Basford, M.P., sponsor of Notice of Motion No. 32;
and Mr. Anthony Bazos, lawyer.



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Laflamme,	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Scott (<i>Danforth</i>),
Mr. Chrétien,	Mr. MacEwan,	Mr. Tolmie,
Mr. Fulton,	Mr. Mather,	Mr. Trudeau,
Mr. Goyer,	Mr. McCleave,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Woolliams—(24).
Mr. Guay,	Mr. Nielsen,	
Mr. Honey,	Mr. Otto,	

¹Replaced Mr. Bell (*Carleton*), Thursday, October 26, 1966.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

TUESDAY, October 25, 1966.

Ordered,—That the Standing Committee on Justice and Legal Affairs, be granted permission to adjourn from place to place; and that it be authorized to sit while the House is sitting when meeting beyond the precincts of Parliament; and that the Clerk of the Committee and the necessary supporting staff accompany the said Committee.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

WEDNESDAY, October 26, 1966.

Ordered,—That the name of Mr. McCleave to be substituted for that of Mr. Bell (*Carleton*), on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

THURSDAY, October 27, 1966

(16)

The Standing Committee on Justice and Legal Affairs met this day at 11.25 a.m. The Chairman, Mr. Cameron presided.

Members present: Messrs. Cameron (*High Park*), Choquette, Forest, Goyer, Honey, Latulippe, Mather, McCleave, Ryan, Tolmie, Trudeau, Woolliams (12).

In attendance: Mr. Ron Basford, M. P., sponsor of Notice of Motion No. 32.

The Chairman read the Fourth Report of the Subcommittee on Agenda and Procedure, which is as follows:

Your subcommittee met on Wednesday, October 6, 1966, at 3.30 p.m., and has the honour to present its

FOURTH REPORT

1. That, regarding the trip to the testing and research facilities of the automobile industry in Detroit, the Committee leave late in the afternoon of November 8 for Windsor, tour the facilities on Wednesday, November 9, hold a meeting the evening of November 9, tour the facilities the morning of Thursday, November 10, hold a meeting the afternoon of November 10, and return to Ottawa the same day after the meeting.

2. That Dr. Ward Smith be invited to reappear before the Committee re Bill C-87.

3. That the Committee begin hearing witnesses re Bill C-105 (insanity) and Bill C-176 (insanity at time of trial) on November 15, 1966, providing all witnesses have been heard re Bills C-27, C-49, C-87 and notices of motion 26, 31 and 38.

On motion of Mr. Mather, seconded by Mr. Forest,

Resolved,—That the Fourth Report of the Subcommittee on Agenda and Procedure be adopted as read.

The Chairman introduced Mr. Ron Basford who made a statement on his notice of motion relating to the removal of flight insurance sales facilities in airports.

Mr. Basford stated that the Canadian Airline Pilots Association, the Association of Air Flight Attendants, the Canadian Coroners Association and the Canadian Bar Association (B.C. Branch) would possibly be interested in appearing before the Committee.

The Committee then proceeded to the questioning of Mr. Basford.

It was suggested by the Committee that officials from the Department of Transport, concerned with air flight insurance, be called before the Committee.

Mr. McCleave asked that the Canadian Airline Pilots Association be asked if they might suggest a means of checking baggage sufficiently well to prevent the transport of explosives aboard commercial aircraft.

At 12.35 p.m. the Committee adjourned until 3.30 p.m. the same day.

AFTERNOON SITTING

(17)

The Standing Committee on Justice and Legal Affairs reconvened this day at 4.30 p.m. The Chairman, Mr. Cameron presided.

Members present: Messrs. Cameron (*High Park*), Chrétien, Forest, Goyer, Latulippe, MacEwan, Mather, McCleave, Ryan, Tolmie, Woolliams (11).

In attendance: Mr. Anthony Bazos, Lawyer.

The Chairman introduced Mr. Bazos and invited him to make a statement re Bill C-87 (impaired driving).

On motion of Mr. Mather, seconded by Mr. McCleave,

Resolved,—That Mr. Bazos' brief be made an appendix to today's proceedings (see Appendix 7).

On motion of Mr. McCleave, seconded by Mr. MacEwan,

Resolved—That the 1964-5 Report of the Minister, Ontario Department of Transport, and Accident Facts, 1965, Ontario Department of Transport be made exhibits (see Exhibits 12 and 13 respectively).

At 5.55 p.m. the questioning continuing, the Chairman, Mr. Cameron, asked Mr. Forest, the Vice-Chairman, to assume the Chair.

At 6.25 p.m., the Vice-Chairman thanked Mr. Bazos for his contribution and the Committee adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, October 27, 1966.

The CHAIRMAN: Gentlemen, we have a quorum. My first duty, which is a very pleasant one, is to welcome Mr. Robert McCleave as a member of this committee. He is replacing Mr. Bell, who is very busily engaged in another committee which, I believe, is meeting twice a day. We are very, very glad indeed to have you with us.

Gentlemen, your subcommittee met yesterday afternoon in my office and I will read their report:

Your subcommittee met on Wednesday, October 26, 1966, at 3:30 p.m., and has the honour to present its:

FOURTH REPORT

1. That, regarding the trip to the testing and research facilities of the automobile industry in Detroit, the Committee leave late in the afternoon on November 8 for Windsor, tour the facilities on Wednesday, November 9, hold a meeting the evening of November 9, tour the facilities the morning of Thursday, November 10, hold a meeting the afternoon of November 10, and return to Ottawa the same day after the meeting.

2. That Dr. Ward Smith be invited to reappear before the Committee re Bill C-87.

3. That the Committee begin hearing witnesses re Bill C-105, (insanity) and Bill C-176, (insanity at time of trial) on November 15, 1966, providing all witnesses have been heard re Bills C-27, C-49, C-87 and notices of motion 26, 31 and 38.

This applies to safety devices on motor vehicles. This report was respectfully submitted by myself as chairman.

Is there any discussion on the report?

Mr. TOLMIE: There is a question, Mr. Chairman, of Dr. Ward Smith returning. There was also mention of Dr. Roussel.

The CHAIRMAN: That is perfectly true.

Mr. TOLMIE: In case we need him after those two witnesses who appeared before the Bar of the province of Quebec. He is quite an expert on the breathalyser and I think it would be worth while if we could hear him. He could be a new witness in place of Dr. Ward Smith, or he could appear with Dr. Ward Smith.

The CHAIRMAN: I would prefer Mr. Ray answer that because he has been in touch with Dr. Ward Smith about it. Possibly you could tell the committee what the report is from Dr. Ward Smith.

The CLERK OF THE COMMITTEE: I spoke to Dr. Ward Smith this morning about appearing on November 8, and the first day he has free is November 22. I suggested Dr. Roussel and he said he would very much like to appear with Dr. Roussel on November 22.

The CHAIRMAN: He expressed some very high opinion about his qualifications, too, did he not?

The CLERK OF THE COMMITTEE: He said that Dr. Roussel was not an expert in the actual operation of the breathalyser itself but he was certainly an expert on the related factors surrounding this. Dr. Ward Smith thought very highly of him.

The CHAIRMAN: My memory of it is that at the next meeting of the subcommittee we would take it up and would decide whether we wanted to call Dr. Roussel as well as Dr. Ward Smith. Is there any other discussion?

Mr. TOLMIE: What is the date mentioned, Mr. Chairman?

The CHAIRMAN: November 15.

Mr. TOLMIE: I mean regarding the trip?

The CHAIRMAN: To Detroit? November 8, two weeks from today.

Mr. RYAN: Mr. Chairman, regarding the date for the proposed trip to Detroit, I think it was decided that we would find out the opinion of the member on whether they could go at that time and whether transportation would be finalized at that time.

The CHAIRMAN: Well, on the basis of this report, if you do decide that is satisfactory time to go, November 8, 9 and 10, I have already been in touch with Mr. Pickersgill's office to see what can be done about arranging transportation and necessarily the department would want to have a motion on the record that we would be going on these days. Now is the time to say whether that is a good day or whether we should try to select some other day. These dates seemed to fit in with our plans in the best way possible.

Mr. RYAN: For the period November 7 to November 20 I will be out of the country on parliamentary business. I do not think it affects anyone else on the committee. I would ask that I be replaced on the committee. I regret very much I will miss this expedition.

The CHAIRMAN: Will you speak to the whip about it so that your replacement may make this trip? Please return to the committee when you come back.

An hon. MEMBER: What time of day will we leave?

The CHAIRMAN: I do not think it would be too early in the day, probably early evening, six, seven or eight o'clock, just time enough to get to Windsor. We will be back on Thursday.

Mr. TOLMIE: Friday is a holiday, is it not?

The CHAIRMAN: Friday is a holiday, Remembrance Day.

Any further discussion? Do I hear a motion that this report be accepted?

Mr. MATHER: I so move.

Mr. FOREST: I second the motion.

Motion agreed to.

The CHAIRMAN: We now have before us Mr. Ron Basford, the distinguished member for Vancouver-Burrard who propounded the following motion in the house.

That, in the opinion of this House, the government should give consideration to the advisability of amending the government airport concession operations regulations to provide, by virtue of its power to regulate the performance of any service for persons on the airport, that no licence be granted by Her Majesty in Right of Canada for the operation of insurance vending machines.

I do not need to introduce Mr. Basford to this committee. We all know him, respect him and honour him for his ability and we would be very glad to hear from you now, Mr. Basford.

Mr. BASFORD: Thank you very much, Mr. Chairman and hon. members. I hope to be very brief this morning.

I introduced this motion, and the remarks on it are contained at page 8362 of *Hansard* for October 5. I have some additional copies here if anyone wishes to have one.

The subject matter of the motion which the Chairman has read was referred to this committee by the Solicitor General and it allows this committee, it seems to me, to enter into a full examination and investigation of the subject of flight insurance generally. You will note that my resolution deals specifically with flight insurance sold through vending machines, which are located at all of our airports operated by the Department of Transport. However, this is the first time in Canada, of which I am aware, that such an inquiry has been held and I would urge the committee, in discussing and examining into the subject matter of this resolution, to consider the whole matter of flight insurance, whether sold by vending machines, pretty little girls behind counters in the airports or by regular insurance agents. While all of us, I am sure, recognize that for most purposes there is a good deal of difference between pretty little girls and vending machines, I think in the sale of insurance there is really very little difference because, if one has ever bought flight insurance either from the manned or pretty girl counters in the air terminals or from a vending machine, one will notice that the type of application is almost identical and that there is really no examination of the applicant who wants the insurance.

I do not want to go this morning into all of the technical detail that has been amassed on the subject because I would hope and expect that the committee will be hearing from the Canadian Air Line Pilots Association, which I believe has already been in touch with your Chairman. This association, which represents the air line pilots of Canada, has done a great deal of work on the subject of flight insurance and on the subject of flight insurance vending machines specifically. They are anxious to appear before you and give you the technical detail and the information that has been amassed on this subject. I think, as I tried to demonstrate in my speech in the house, that the evidence which has been accumulated indicates that there is a definite connection between the purchase of air line flight insurance and sabotage on aircraft and that there have been a

number of very serious air line bombings and sabotage, resulting in loss of life, which can, I think, definitely be linked to the purchase of flight insurance.

Now, the object of this resolution, and the object of those who favour doing away with the vending machines and/or the counters in the air terminals, is not to do away with flight insurance. I would like to make my position very clear on that. People can buy trip insurance for any mode of travel and they should be allowed to buy trip insurance if they want to travel on an aircraft. What is aimed at here is the person who can go to an air terminal and put 25 cents, 50 cents or 75 cents in a vending machine and insure his life or the life of someone else for a great deal of money without any examination of his financial stature, his mental state, purpose of the insurance, or anything else. What we would like to see, if people want to insure themselves for travel, is that they buy this insurance as they would any other type of insurance where you have to apply to an agent, who has the right to accept or refuse your application and who generally carries on some form of investigation of you and your standing and stature and makes a decision on whether you are a fit person to be insured. This, of course, is something which no vending machine can do. That is why it is suggested that vending machines are an invitation to maniacs to insure either themselves or members of their families, or in some cases unrelated persons, for large sums of money and then sabotage the aircraft. Anyone who is mentally deranged, of course, does not fear a vending machine. It is very easy for that sort of person to work out his plans for bombing or sabotage and they buy the insurance through a vending machine. If that same person had to apply to an agent, had to be examined, had to be known, I suggest that the chances are that he would find some other way of either eliminating himself or a member of his family he wanted to eliminate. Certainly doing away with vending machines is not going to stop people committing suicide or people murdering others but it is, I think, going to help prevent them at the same time they do away with themselves, or some member of their family whom they want to eliminate, from killing a good number of innocent people who are also, of course, killed when an aircraft is sabotaged.

I think the committee, Mr. Chairman, will probably want to examine some other suggestions that from time to time are made in this connection, as I think was touched on by Mr. Mather in the house; that is, rather than outlawing the machines or the counters entirely, by putting restrictions or limitations on the amount of insurance that can be carried on any one life and by limiting the number of people or the type of people who can be named as beneficiaries. There are cases where people have insured others totally unrelated to themselves. One example is a case which occurred on September 24, 1952 in Mexico City when a bomb exploded in the baggage compartment of a Mexican air lines DC-3. It had been placed aboard by two men who had insured seven passengers for a total of \$208,000. The suggestion is made from time to time that people on air flight or trip insurance should only be allowed to insure their immediate family; their wife, husband, children or parents. The suggestion is also made from time to time that there be a limitation on the amount of insurance that may be carried; in this case \$25,000 or \$50,000. It is thought this would allow people who are concerned or nervous about flying to insure themselves, and it would fill that need, but would help to prevent those wanting to insure people in order to amass, either for their own estate or for the estate of someone else, a great deal of money.

I would be happy, Mr. Chairman, to answer any questions on this subject, although I do not in any way purport to be an expert. I would hope that the committee in making its examination would, as I say, hear from the Canadian Air Line Pilots Association and from the Canadian Air Line Flight Attendants Association, who represent the stewardesses and the stewards, who are also concerned in this matter. I mentioned that so far as I know this is the first time such an inquiry would be held in Canada. The Canadian Coroners Association has been making a study of the subject but has not yet reached any conclusion. The Canadian Bar Association, particularly the British Columbia branch, has been working on this matter through their air law section but to my knowledge have not yet come to any conclusion. I would think that it might be valuable to contact those four groups to see whether they would like to make representations to the committee.

There is, Mr. Chairman, an opportunity here, I suggest, for fairly speedy action because in most of our committee deliberations we are concerned with legislation suggesting a bill or amendment to bills. Here we are dealing with regulations and if the committee wants to take action all it need do is recommend an amendment be made to regulations by the Governor in Council.

Most of the airports in Canada are run by the Department of Transport, which has complete control and authority over what goes on in terminals and whether people can put up vending machines, counters, newsstands, U-Drive or car rental stands. All that need be done here to get action is for the Department of Transport to amend its regulations to prevent leasing of space in air terminals to the insurance companies operating in this business.

Therefore, if the committee makes a recommendation, there is really very little reason or excuse for any delay in implementing that recommendation.

Mr. Chairman, I said I would be brief. That is all I would like to say at the moment by way of introducing this subject. I think you will have people before you, particularly the Canadian Air Line Pilots Association, who are far more competent than I to go into the details of this matter. I would now be happy to answer any questions.

The CHAIRMAN: Thank you very much indeed, Mr. Basford. We have already heard from one or two of the organizations you have mentioned. Mr. Basford is now open for questioning.

Mr. RYAN: I would like to ask Mr. Basford, relating to the Department of Transport, under what act these regulations exist with respect to licencing?

Mr. BASFORD: Under the Department of Transport Act.

Mr. RYAN: The federal government of course, has some jurisdiction over insurance but it does not have entire jurisdiction, does it? I believe the provinces have their own insurance acts as well.

Mr. BASFORD: Yes. This is a constitutional problem and one that has also created a problem in the United States, where there has been a good deal of litigation over the years for some similar action. There have been bills introduced both to the Senate and the House of Representatives in this connection. They have run into this same problem in the United States where the states also have jurisdiction in matters of insurance. That is the reason why, Mr. Ryan, I have introduced the motion simply dealing with the operation of air terminals because here is a possible constitutional problem in Canada whether the parliament of

Canada could pass legislation dealing with trip insurance as such. I really think what we are dealing with here is the sale of insurance at air terminals operated by the Department of Transport and over which, of course, we do have control.

Mr. RYAN: Yes, but you did mention that in some places life insurance is saleable on the basis of the main beneficiary being other than a preferred beneficiary or a beneficiary for value. In the province of Ontario I do not believe it is possible to name a beneficiary outside the preferred class unless it be for value or some special circumstance. I take it from your remarks that there are places in Canada where a man can go into an airport terminal, buy a policy on his life, go up in the plane and have a great deal of money under an air flight insurance policy assigned to someone who may not be related to him in any way or have any claim in any respect against his estate. Is this so?

Mr. BASFORD: Yes, I am suggesting that is so. You can, with a vending machine, list anyone you wish as a beneficiary. I think you have raised an interesting point, in that if a complete stranger were named as a beneficiary and endeavoured to collect on the insurance, then he would face the possibility of the company denying liability and not paying. There undoubtedly would be litigation in that event.

Mr. RYAN: That is an area that would certainly appear to need over-all control across Canada?

Mr. BASFORD: Yes, although that is not what my resolution deals with, and I suggested—

Mr. RYAN: But you have advanced it as an argument for doing away with these machines.

Mr. BASFORD: No, I did not advance it as an argument. I said there had been other proposals made. Rather than doing away with air line insurance that there be other approaches taken, such as limitation to the amount of insurance that could be carried or to the class of beneficiaries who could be named. I do not particularly favour those approaches but I put them before the committee as two approaches that had been suggested and they were two areas I thought the committee would probably want to look at.

Mr. RYAN: Are you concerned at all with the mailing out of applications by these air flight insurance companies to individuals whom they know are going on flights and have made reservations? The application is mailed in to the company, the man goes on his flight, and if there is an accident the money is paid to the beneficiary whom he named in his application. This is done in respect to some commercial flights, particularly by these same insurance companies—

Mr. BASFORD: Are you referring to the case where you fill in an application through a vending machine?

Mr. RYAN: No, it is where it has been mailed or placed in your hand. They know you are going to be a passenger on a certain flight.

Mr. BASFORD: This is a practice of which I am not aware.

Mr. RYAN: What you are mainly interested in is obtaining the support of this committee for the prevention of the sale by vending machines in airports on the basis that someone with an insane impulse, or even a psychiatric impulse, is tempted by their very existence. The power of suggestion to them is very great to buy insurance for an evil purpose.

Mr. BASFORD: I think you will find from the evidence that will be presented by the Canadian Air Line Pilots Association that there are documented cases of people who either want to kill themselves, or murder their wives or their mothers-in-law, who have picked air lines as a way of doing it because they have been able to buy insurance very easily and at the same time, as well as eliminating themselves, have been able to leave their estate a fairly substantial sum of money. People, in trying to eliminate their wives or mothers-in-law, have been able to enrich themselves. If this insurance was not easily available they would probably still commit suicide but would do it by jumping off a bridge or by some other means. But because this insurance is so readily available without examination and, without investigation, I suggest they then use air line sabotage as a method of accomplishing what they want to do. This, of course, kills a number of innocent people.

Mr. RYAN: I am also interested in a couple of paragraphs from your speech in the House on October 5, 1966, where at page 8364 of *Hansard*, the last two paragraphs in the second column, you say:

A former United States federal aviation agency administrator has called flight insurance a 'gyp'. The odds against being killed in an air crash in Canada are 276,000 to one. Flight insurance pays off at 30,000 to one, or only a tenth of the true odds.

Accidental death and double indemnity policies, which are more normal, pay off at about half the true odds. True they are more expensive—\$35 a year for \$30,000 coverage—but they are payable for any accidental death, the chances of which are one in 1,755 per year, compared to one in 276,000 for a plane trip.

Now, are you seeking a reformation of the odds here or seeking in any way to control this situation, which does seem to be a rather fantastic one?

Mr. BASFORD: No, what I was really trying to suggest—and I did so in another paragraph in that speech—is that I think air line insurance is really quite unnecessary. Air travel is now the safest form of travel in existence and yet people seem to have a great fear of it and seem to be very insurance-conscious about it. I think that fear is rather silly. If people want to buy trip insurance that is a freedom I am not going to take away from them. Generally I think they are being rather foolish in spending money on it.

Mr. RYAN: You are not concerned with possible unfair profits being made by the companies?

Mr. BASFORD: I am concerned, but this is a free enterprise society and if people want to buy insurance which is a very bad buy, that is their right I suppose. I think the odds show it to be a very bad buy.

Mr. RYAN: I will pass, Mr. Chairman. Thank you very much.

Mr. WOOLLIAMS: I would like to ask a couple of questions. I do not want to get into a legal argument on this because I am sure you have done research on it and I must confess I have not. I am merely seeking information. I do not know whether you were suggesting or not, Mr. Basford, if it could be proven that a person bought insurance, got on the aircraft and then blew himself up with the others, which is basically suicide, that he could collect on the insurance?

Mr. BASFORD: Well, I would say offhand—although I have done some studies I do not profess to be an expert—if that could be proven, no, his estate could not collect. But the hope, of course of anyone doing it is that all of the evidence would be destroyed. It is never proven.

Mr. WOOLLIAMS: Well, that is the point I wanted to make, that basically—I think I am correct on this and I think you will probably agree with me—if you can prove that to the satisfaction of the court either by circumstantial evidence or direct evidence, then the insurance policy would be void.

Mr. BASFORD: I would agree with that, yes.

Mr. TOLMIE: Mr. Chairman, I have gone over the various speeches in the house and I have a few comments I would like to make.

I feel there is a very strong argument for the position that if you are going to retain over-the-counter insurance, then there is not much point in discarding the vending machine type of insurance because the same attraction would still exist for someone with a deranged mind to come in and quickly and easily obtain insurance. Would that be a fair comment?

Mr. BASFORD: I think it is, although there would be some who would argue because they have to confront the girl face-to-face that this is a deterrent. I do not think it is a very great deterrent. This is why I have said for all practical purposes the vending machine is the same as the girl behind the counter.

Mr. TOLMIE: Now, another point. As I understand it, the main purpose of the motion is to help to prevent the rare occurrence of planned sabotage; in other words, where a person is willing for material gain to plan a bombing, plan the destruction of an aircraft in order to benefit financially.

I think one of the main arguments is that if this entails so much planning—and I agree that it does—then the elimination of obtaining insurance at an airport I do not think is going to thwart anyone who has definitely and methodically made this plan. He is going to be able to get the insurance through an agent. Therefore, by eliminating the insurance at an airport, what you are really doing is perhaps catching the very rare occurrence of someone with a deranged mind who appears suddenly and for some psychotic impulse buys it. Now, this is perhaps more of an argument than a question. I would like to get your comment later.

I think that the very strong argument for retaining this insurance—and this is a very difficult subject, as we know—is the fact that I believe there are thousands of travellers, and there will be more, who do not travel very often. They are nervous, they make hurried preparations, they do not go to the trouble of inquiring about insurance, they do not go to the agent, they do not even think about it. They get to the airport and all of a sudden they say to themselves, "My wife and my family are flying for the first time, I want to protect them." They see the vending machine, they see the easy accessibility of flight insurance and they are able to get it. I think this is the point that we should not overlook in our efforts to prevent sabotage.

I think another point which has not been mentioned is the situation in the United States. As I understand it, according to Mr. Stanbury's argument, detailed study of air line sabotage was done about a year ago and the Federal Aviation Agency came to the conclusion that air line saboteurs are beyond the reach of any reasonable approach, and the removal of air port insurance vending

machines would not achieve the purpose intended. They concluded that sabotage usually requires prior planning and the sale of insurance at airports would not be a major factor in such prior planning. I just bring that up to get your comment on the situation. The Americans have evidently investigated this and they have come to completely diametrically opposed conclusions to those which would be effected by your bill. One further point is that you state, and rightly so, that air travel is safe now. Air travel will increase, air corridors will become more crowded, and perhaps rather than making it more difficult to get air insurance the trend may be that air insurance should be more available in view of the fact there will be more air travel, more danger and more people travelling.

Now, these are just arguments advanced—they are not really questions—and I would like to get your comments on some of these matters.

Mr. BASFORD: Well, I do not entirely accept the proposition that because these operations involve a good deal of planning you should leave the vending machines there. Undoubtedly someone who is intending to blow up an aircraft, either for purposes of committing suicide or murder, has to go through a good deal of planning. What I am suggesting is that by reason of the fact that he can obtain flight insurance so easily, he is invited to plan the murder or the suicide by way of aircraft sabotage. If it was not so easily or readily available he would pick some other method of committing the murder or the suicide.

Mr. TOLMIE: These are your comments on the American agency and their conclusions?

Mr. BASFORD: Yes. This was a subcommittee of what is called the Federal Aviation Agency. That was the conclusion that particular committee came to, which is composed of a representative from the Civil Aeronautics Board, the Federal Aviation Agency, the Department of Justice, the Air Transport Association, the Airport Operators Council and the vice president and council of American for Loyalties group insurance companies. I challenge some of the conclusions they came to, I do not agree with them. They also ran into the constitutional problem of whether, in fact, they could impose some restrictions on it.

Mr. TOLMIE: That is all, Mr. Chairman.

(Translation)

Mr. CHOQUETTE: Simply this. One question to Mr. Basford. This might have been said already; however, I will put the question anyhow. There is at present a system used by certain banks where they used electronic machines. When somebody goes to the wicket, he is immediately photographed. Do you believe that this might conceivably be an efficient means that could be used, in such instances, in the control of such vending machines?

(English)

Mr. BASFORD: I do not know, Mr. Choquette. It is a novel idea to me. Whether it has been explored before or not I do not know. My first impression is that if someone has to be photographed this certainly would act as a deterrent. That is my initial reaction to it.

Now, there have been examinations carried out, I believe, by our own department and certainly in the United States this has been done, and I am sure

that the Canadian Air Line Pilots Association will be able to add to this. Speaking of devices that people have tried to develop in one way or another to detect bombs, my understanding of it is that no effective machine has yet been designed. I refer here to some type of X-ray machine which discloses bombs in luggage or detects the fumes of the explosive, this sort of thing, a breathalyzer for bombs. Whether they have examined the question of photographing people or not, and what effect it would have, I do not know. It is a novel idea to me and one that perhaps should be looked at.

(Translation)

Mr. CHOQUETTE: What you are suggesting is the elimination of these vending machines because it becomes far too easy to buy the necessary insurance. This being the case, the person who wishes to buy insurance should be photographed. If this were done, there is some type of protection provided, and this could serve to prevent some of the abuses you have been denouncing.

(English)

Mr. BASFORD: Well, I said, at first blush, I thought that would have a deterrent effect. How much, of course, is a matter of argument. Of course, anyone buying insurance, if he is going to collect on it, should have to identify himself on the form by name and address. I think you could argue that the taking of a photograph would not constitute much of a deterrent.

(Translation)

Mr. CHOQUETTE: In any event, you think this deserves consideration?

(English)

Mr. BASFORD: Well, I think so. It is a novel idea to me and whether it has been considered by experts or not, I am not aware. I think it should be given some thought.

(Translation)

Mr. CHOQUETTE: May I say, Mr. Chairman, that I insist that that matter be taken into consideration.

(English)

Mr. MATHER: Mr. Chairman, as one who is sympathetic with the purpose of Mr. Basford's bill, I would like to ask him one or two questions.

Is it fair to say that your contention is that life insurance vending machines located in airports offer a unique or special type of encouragement or inducement to destruction?

Mr. BASFORD: Yes. They offer an inducement to people who, speaking about suicide, for example, are thinking about committing suicide on an aircraft by way of sabotage rather than in some other way. There is psychiatric evidence—mentioned this very briefly in my speech in the house and I think the air line pilots will go into it further—to the effect that people committing suicide still feel a responsibility to their wives and their families and can face suicide a little easier knowing that their families are looked after, and therefore they pick air line sabotage as a method because they can do this very easily by plugging quarters into a machine.

Mr. MATHER: I believe I am right in thinking that your bill is aimed at the machines and the sale of life insurance within airports because of the fact that the operation of airports is a federal matter. Consequently, if the committee decided to do anything about this, it would be an area in which we could legitimately hope to act because of the federal responsibility?

Mr. BASFORD: That is right, by eliminating vending machines from Department of Transport airports. I cannot give you a precise figure, but I am prepared to say you would eliminate 98 per cent of the vending machines in Canada.

Mr. MATHER: Would you agree that the committee might also give consideration to regulating not only this type of retail outlet of flight insurance but regulating flight insurance itself? I do not know if I am in order, but I would like to put forward an idea that some insurance people put to me. Rather than permitting the unrestricted purchase of large sums of flight insurance for people such as aunts or distant relatives, or people who are not related at all, there should be some regulation of flight insurance to provide a replacement value for the breadwinner in the case of the family affected, such as a reasonable lump sum payment and perhaps monthly payments as well. In other words, flight insurance itself, rather than just the retail outlet, should be considered by this committee. Do you agree with that philosophy?

Mr. BASFORD: Yes. I mentioned in my opening that this was another approach or a different tack to the problem. However, I think in approaching the problem from the standpoint of putting either lump sum or beneficiary limitations on it that you run into the constitutional problems which Mr. Ryan mentioned.

Mr. MATHER: If it were possible for us to regulate the insurance, and if this committee, or whatever authority is involved, agrees to it, this would surely simplify the matter of where the retail outlets would be located. Also no matter where it was bought, the insurance would be of a particular type.

Mr. BASFORD: Yes.

Mr. HONEY: Mr. Basford, do you know of any jurisdiction that has attempted or does in fact regulate flight insurance by methods similar to what you propose, or by other methods?

Mr. BASFORD: No, I do not, but I am only familiar with the North American scene. It is not done either in Canada or the United States. This does not answer your question, but the International Federation of Air Line Pilots Association, which met in Auckland, New Zealand, from March 8 to March 15 of this year, passed a resolution on an amendment to the international rules urging that this be done, that is, that each contracting state should take steps to prohibit the sale of passenger flight insurance within any airport terminal.

Mr. HONEY: You have not made any inquiries with respect to the regulations in Europe.

Mr. BASFORD: No.

Mr. HONEY: I have reference in this question to Mr. Tolmie's suggestion that it is a convenience to have these facilities in airports, and I do not disagree with that. However, I do not think I give it the weight which Mr. Tolmie attributes to it.

Have you made any inquiries or do you know from your knowledge what is involved in the sense of time and trouble—if I could use that word—in obtaining, through a general agent, insurance for specific flights?

Mr. BASFORD: I could not tell you, Mr. Honey, because I have not inquired into it and I have never bought the insurance myself. I understand they are quite easily obtainable.

Mr. HONEY: Just one final question, then. As the sponsor of this resolution you have received, quite properly, quite a bit of publicity. Have you had representations from the Association of General Insurance Agents, for example, supporting the resolution or commenting on it?

Mr. BASFORD: No, I have not. I have had no comments from the insurance industry at all.

Mr. HONEY: Thank you.

Mr. McCLEAVE: Mr. Chairman, my first question arises out of Mr. Honey's last question. Could we arrange, Mr. Chairman, to have a representative of an insurance company attend to make representations and answer our questions as to the thoroughness of examinations by either pretty girls at airport counters or ugly insurance agents in their own offices. Could this be done?

The CHAIRMAN: We are going to have witnesses here.

Mr. McCLEAVE: Could the insurance agents be invited to attend?

The CHAIRMAN: The Canadian Air Line Pilots Association has asked to appear before the committee. There is also a letter from Messrs. Herridge, Tolmie, Gray, Coyne Blair, who represent clients who are interested in the matter, and they undoubtedly will wish to make representations when the subject is before the committee. I have no doubt that they will be invited to do so.

Mr. BASFORD: I do not put this forward as a complete list, there are a great many insurance companies who do not deal in this type of insurance, but the two names I have are Mercury International of Montreal and Tel-Trip Policy Company of Toronto. I believe Mutual of Omaha also does a great deal.

Mr. McCLEAVE: My second question I preface on a very brief observation, that as members of parliament we know the only way to prevent the visit of another Mr. Chartier is to see that nobody gets into parliament at all to see us at work. In other words, there is no complete guarantee against such incidents.

I think, Mr. Basford, the weakness in your case is that murder by sabotage in an airliner is really the objective and that insurance is a side benefit. So, the question I put to you is this. In making a submission would the Canadian Air Line Pilots Association be asked to present us with the best alternative that they can devise in checking luggage so that infernal weapons of murder are not taken aboard aircraft? They may say they do not like to do this because it is undemocratic, and so on, but could we ask for the very best opinion or solution that they can present to us on this subject?

The CHAIRMAN: I do not doubt that we can do that, Mr. McCleave. The clerk will make a note of your question. That is one of the first things we will ask them to deal with.

Mr. McCLEAVE: Could we have some information on how much federal revenue now comes from licensing air flight insurance vending machines?

Mr. WOOLLIAMS: Well, I would like to make this observation and then ask Mr. Basford to comment on it. I think first of all that the resolution, and I do not want to criticize the resolution nor do I want to get too legalistic, but from the constitutional point of view there is no question about it; it is well settled that the sale and administration of insurance is a provincial matter, and that is why we have a uniform insurance act and ten different acts across the nation. There is no doubt about it, I agree with Mr. Basford, we probably could control the vending machines, the selling of insurance in the depot itself, except possibly in the city of Calgary where the depot is still one of the few which is municipally owned. I agree with Mr. McCleave that if a person is intent on suicide or murder they can go to an insurance agent. It is something they plan for a certain length of time. If you look at suicide cases they have been planning it for some time. I do not think it is the vending machine that is at fault. He can go into an office downtown where he can buy insurance. I do not think this really encourages him to commit a crime; it may be just a fringe benefit, as Mr. McCleave said. I sincerely do not think that this is going to prevent this kind of crime.

Now, Mr. Basford may have statistics which will contradict my argument. I think the idea is good. Any time we can bring in any legislation to safeguard life on planes we should do so. I am thinking of the famous case of the jeweler who decided to blow up his wife. He was an invalid and felt his wife was fairly active in society without him, so he blew up the whole plane. Now, I do not think the vending machine had anything to do with his motives in that regard. He decided to murder his wife on that particular aircraft. If he wanted insurance as a fringe benefit, he could have obtained it anywhere because it is under provincial jurisdiction. Now, I would like some comment on this.

Mr. BASFORD: Well, I think the regulation of vending machines in terminals is an effective way for the government of Canada to deal with it. I maintain, if you wanted to eliminate most of the machines, this is an effective way of doing it. I think it would avoid all of the problems. As you undoubtedly know, Mr. Woolliams, you cannot operate a rent-a-car booth in an air terminal unless you are approved by the Department of Transport. However, the provinces do not complain that this is an invasion of their right to regulate U-drive motor vehicles, which they have jurisdiction over. I think this an effective way of dealing with the problem. It would exclude the city of Calgary, as you say.

Now, I have not gone into a detailed examination in the committee of all of the cases of sabotage. I thought I would leave that to the expert witnesses who will appear. They could give you a better résumé of all of them than I could. I am going to leave it that I think they will be able to show you that there is a link in a number of very serious accidents between vending machines and sabotage.

Mr. WOOLLIAMS: Well, it does seem to me there may be some records which could be built up from the witnesses, but the fact that someone decides to murder someone on a plane—call it sabotage or whatever word you want to use—it is a coincidence he happens to have insurance. I do not believe that was the motive, he would have done it anyway. Take out the vending machines. Let us go along with it. Say that the law allows you to take them out, and I agree with you, but I have not been convinced yet that if any of the witnesses say so

it would affect the record as to the safety of passengers when looking at the cases which will be reviewed in this regard.

Mr. BASFORD: Well, I disagree. I think you are misconstruing my argument. By eliminating flight insurance you will not eliminate air line sabotage entirely. Everyone agrees that you are never going to eliminate all bombings or all sabotage by eliminating insurance. But in any other area where safety is involved you do what you can to eliminate the causes of accidents and you go as far as you can reasonably go. In automobile safety this is surely what we are trying to do, or in accident prevention we are trying to go as far as we reasonably can. I suggest that there is a link between flight insurance and sabotage. Surely it is a reasonable proposition to remove that link or remove that one cause of sabotage. That is not going to eliminate sabotage entirely, that is admitted, but I think it is going to eliminate some of the causes.

Mr. WOOLLIAMS: Well, if those facts are true, it would be very difficult to prove one way or the other. If that happens to be true, then the fact that you take a vending machine out of a depot is not going to affect the situation, because you can go and buy this insurance anywhere else downtown or call your insurance man and do it before you leave.

Mr. RYAN: This is a check up system.

Mr. WOOLLIAMS: Yes because, as the Chairman has pointed out, if you sign your name and address you just cannot put down John Doe or sign an x or be incognito, you have to prove who you are. When you buy insurance at a vending machine you still have to sign a contract of insurance. If a false name is given the insurance will never be paid to anyone else. You have your name on the ticket. Your ticket and your name have to coincide before they pay any insurance.

Mr. BASFORD: I put forward the proposition earlier that certainly people have to identify themselves on the contract and sign the contract. But it would be the hope of anyone committing either suicide or murder by way of sabotage that any evidence of bombing would be destroyed.

Mr. WOOLLIAMS: But you can buy that insurance downtown. You do not have to go to a vending machine. That is my point.

Mr. BASFORD: But that is a different argument entirely. If you apply to your insurance agent, which you do when you buy life insurance or car insurance or insure your house, you are identified to your agent and he makes a conscious decision whether or not to insure you. That is a decision that a vending machine cannot make.

Mr. WOOLLIAMS: That is the strongest point you have made in reference to my argument.

Mr. BASFORD: Thank you.

The CHAIRMAN: Mr. Forest, Mr. Latulippe and then Mr. Tolmie.

Mr. FOREST: Would you or the Department of Transport have statistics on the percentage of air travellers who are buying insurance through vending machines, or could you get this information from the Department of Transport?

Mr. BASFORD: I think that the Department of Transport could give you those figures.

Mr. FOREST: I have seen vending machines in most airports. Do they have insurance counters in most airports? Do you buy either from a counter or from a vending machine in most airports?

Mr. BASFORD: From my own experience, I would say certainly at the major air terminals there are both types of sales made. I am sure the Department of Transport could give you the exact breakdown.

Mr. FOREST: Your bill was only intended to get rid of vending machines, not the counters?

Mr. BASFORD: Yes, except, as I said earlier, for practical purposes I see very little difference between the two.

(Translation)

(12.25 p.m.)

Mr. LATULIPPE: Mr. Chairman, would it not be possible, when people buy one of these policies at the airport, that the price of these be simply absorbed by the transport company? If there are accidents caused in order to collect insurance which anybody can take out, the difficulty would be eliminated if the transport company would pay the insurance in advance. Do you have any statistics to show what is the percentage of accidents we have had, the number of murders, the cases of sabotage, the number of bombs put in the aircraft, the number of suicides and so on? Do you have any figures on that?

(English)

Mr. BASFORD: I have some, but I would prefer the air line pilots to give you complete breakdown of the cases. I have a long list of them here.

(Translation)

Mr. LATULIPPE: It does seem that if the transport company involved was obliged to insure its clients, people would not have to take out any other type of insurance and the company would simply pay reasonable insurance and would not sell policies for several thousands of dollars, which would bring about disasters in many cases. I think this would make it possible to do away with these dangers we have been talking about. If people were not able to insure themselves other than through the policy taken out by the company itself, I think it might be a much better idea, this might remove the dangers we are talking about.

(English)

Mr. BASFORD: I agree, and it is a very interesting proposal. That would eliminate the need for flight insurance altogether.

The CHAIRMAN: Do you have another question, Mr. Tolmie?

Mr. TOLMIE: Just one short one. Mr. Basford put forward the argument that in his opinion if people were going to decide upon suicide, the presence of flight insurance might induce them to avail themselves of self destruction by aircraft more so than perhaps some other means.

Now, I think perhaps the argument is just the opposite. If I was going to commit suicide—and I think we all feel like it occasionally—I would take out a more comprehensive policy which was not specifically designed to cover an

aircraft accident. It would have to be included in the general coverage but it would not be specifically for that purpose. Then, perhaps six months or a year later I would arrange to have the aircraft blow up.

An hon. MEMBER: You have to wait two years, I think.

Mr. TOLMIE: Two years, yes. But I would not go down to the air terminal and buy flight insurance and then on that very flight find myself in a situation where I am killed. The authorities would, I think, be more prone to investigate my particular insurance application because it was designed specifically for that particular flight. So, I do not think that the presence of air flight insurance, either from a vending machine or over the counter at an airport, would induce people to commit suicide more this way than any other way.

Mr. BASFORD: Well, I think you are simply a more ingenious homicide, that is all. You have argued both ways this morning, Mr. Tolmie. First, that vending machines have no effect because suicide is a matter of great planning and second, you argue that it is not a matter of great planning.

Mr. TOLMIE: No, I was speaking of sabotage, not suicide.

Mr. BASFORD: Well, there are a hundred and one ways to commit suicide. You have picked another way, that is all, but suggest there are people who would pick this one.

Mr. McCLEAVE: Mr. Chairman, I did not give Mr. Basford a chance to comment before, but I now would like to ask a question which will give him an opportunity to do so.

I ask a very obvious question, Mr. Basford. It is a fact, is it not, that there are no vending machines selling dynamite or explosives in airports?

Mr. BASFORD: None that I am aware of, no.

Mr. McCLEAVE: Then how is the presence of the machine itself an incentive when the person has had to come to the airport with this murderous mechanism already in his luggage? How does the presence of the machine spark the operation you seek to guard against in your resolution?

Mr. BASFORD: I think the answer to that is as I said before; because the insurance is so easily and readily available, without someone having to make a conscious decision whether or not this person should in fact be insured, it encourages the person to pick this method of either committing suicide or committing murder. As I explained before, there is an indication that people who commit suicide, in spite of the fact that they want to commit suicide, are concerned over how they leave their wife and family and because vending machine flight insurance is so easily obtainable they pick this method of doing it.

Mr. McCLEAVE: So, the advantage is the machine does not ask questions?

Mr. BASFORD: That is right.

Mr. McCLEAVE: It is the interposition of the human factor which might be the one deterrent against such action?

Mr. BASFORD: That is right. If he has a very cold-blooded, psychopathic personality he probably would be prepared, as he is to buy dynamite, to go to an agent and be examined. But the vending machine would, I think, help to eliminate from such an examination a person with a very disturbed mind who

would be fearful of being personally examined but can go and plug quarters in machine.

The CHAIRMAN: I want to call to the attention of the committee that we have Mr. Bazos with us who is going to speak on impaired driving. It is now past half past twelve. I think we have the right to meet this afternoon, but we have Mr. Bazos here and I certainly want to give him an opportunity, either following the conclusion of Mr. Basford's testimony or this afternoon, to present his argument.

Mr. MATHER: Mr. Chairman, on that point, if it is agreeable to the committee and Mr. Bazos, I think we should conclude Mr. Basford's testimony, if possible, this morning and then have a meeting this afternoon.

The CHAIRMAN: Is that agreeable to you, Mr. Bazos, that you come back this afternoon? It will probably be between 3:30 and 4 o'clock because we have to be in the house until approximately that time.

Mr. MATHER: Mr. Chairman, I must preface my question with the statement that what I heard this morning makes me think that what we should try to regulate is not the type of retail outlet, the vending machine itself,—although I am sympathetic to that—but the actual type of insurance that is sold. In so far as money and insurance is a factor in aircraft destruction, I think we should consider the insurance itself no matter where it is sold.

I was interested in Mr. Latulippe's suggestion about the air lines selling insurance. In connection with that, could we request the air line companies to give us their views, as well as the air line pilots, on this problem?

The CHAIRMAN: I think that is a question for the subcommittee on procedure to deal with. We have heard from Mr. Basford. We have other witnesses who want to come before us. Mr. Ray has suggested we might get someone from the Department of Transport to give some statistical information. At the next meeting of the subcommittee we can decide whether we wish to hear any other witnesses.

It is agreed then, gentlemen, that we adjourn until after Orders of the Day. We will then hear Mr. Bazos.

We apologize, Mr. Bazos. I did not anticipate that we were going to go on. I thought after Mr. Basford made his statement there would be comparatively few questions, but this is a committee which is composed mostly of lawyers and you can see they have all asked questions.

We will meet in this same room and we are governed by the fact that most members want to stay until Orders of the Day are called. We cannot tell just how long that will take. We assume it will be somewhere between three-thirty and four o'clock.

AFTERNOON SITTING

The CHAIRMAN: Gentlemen, we have a quorum. I am going to call upon Mr. Bazos who will make his presentation to the Committee now. I do not think Mr. Bazos needs more than a very short introduction.

Mr. Bazos, is a lawyer who has practised in Toronto for a considerable number of years. He has been specializing in criminal law and he did achieve considerable notoriety owing to the fact that he did get a man off who, I believe

had been in Kingston for two years. He was charged with an offence which he did not commit. I call upon Mr. Bazos for his presentation.

Mr. ANTHONY C. BAZOS (*Toronto, Ontario*): Gentlemen, may I, please, before I enter into my remarks in reference to the submission I have to make draw to your attention that I, for a long period of time, had been under the impression that alcohol had been a substantial contributing factor to automobile accidents and also automobile accidents in which fatalities had occurred. This impression I obtained because of the fact I had heard a variety of people speaking about it at various meetings of the Canadian Bar Association, of which I am a member, over the last two or three years; also at various other meetings which I had attended and what I had read in the newspapers.

As I became aware of the fact that there was a bill pending, which is Bill No. C-87, and also being an active member of the criminal justice section of the Canadian Bar Association, the Ontario subsection for the last two years had been adamantly opposed to this compulsory breathalyzer test for a variety of reasons. So, when I ascertained that in fact this Bill No. C-87 was pending, and because I had personal views over and above this question of the percentage importance of alcohol to automobile accidents and fatalities, I decided I would ask to appear before the Committee and make a submission. As a result, I decided I would make certain inquiries and investigations into statistics.

In the first page of this short memorandum I have listed for the last six years the accidents that have occurred in metropolitan Toronto. I obtained these figures from the metropolitan police department.

The interesting part, for example, in the first year of 1965,—I will not go through the other years but I will just write them down—it showed that there were 29,818 accidents. As a result of this there were criminal charges of all descriptions which included arrests, summonses and Highway Traffic Act violations of 12,484. Of these total accidents there were personal injury accidents involving 4,110; property damage accidents involving 8,329 and there were 41 fatalities involving criminal charges. There were impaired driving charges laid in 1,106 instances which amounts to a percentage of 3.70 to the total number of accidents. The number of intoxicated charges under the Criminal Code for 1965 were 190; the number of fatalities from impaired driving charges were 4; the number of fatalities from intoxicated charges were 2. The personal injuries from impaired were 364; the injuries in intoxicated charges were 70.

For the other years preceding that, back to 1960, there was a corresponding increase to the extent that in 1964 it was 3.85 per cent; in 1963, 4.03 per cent; in 1962, 4.40 per cent; in 1961, 4.87 per cent and in 1960 it was .437 per cent. In addition to this, I attended at the Ontario Department of Transport and obtained from them a book which is entitled "Accident Facts 1965" which provides statistics relating to motor vehicle traffic accidents and I also obtained the 1964-65 report of the minister of the Ontario Department of Transport which also contains additional information. I summarize briefly in the following two or three pages what these figures disclosed and frankly it surprised me to some extent.

It was noted in the accident statistics book—the "Accident Facts" of 1965—that inattentive driving was the most frequent improper driver action recorded by the police as a cause of all accidents. They go further and state that in the age groups of 16 to 24 years, the other improper actions reported mostly

were in the following order. Speed too fast for road and traffic conditions; driver lost control or did not have right of way.

Dealing with the age groups of 25 to 64, the factors were, did not have right of way; driver lost control; speed too fast for road and traffic conditions.

In the age group 65 years and over, the important factor involved was they did not have the right of way.

In the number of accidents in Ontario, there were 192,384 of which the condition of the driver in 91.2 per cent of these accidents was apparently normal. Ability impaired was classed as 3,832, 1.8 per cent; 13,334 or 6.3 per cent as "had been drinking." Now these words, "had been drinking" means there was possibly alcohol on the breath but it was not a contributing factor to the accident.

More than 36.8 per cent of the total reported accidents occurred in urban areas, cities having a population of 10,000 or over but not including Metropolitan Toronto. Accidents in Metropolitan Toronto with about 25 per cent of the Ontario population made up 22 per cent of the total while 21.1 per cent happened on the main provincial highways.

In so far as fatal accidents are concerned, driver actions reported by the police in fatal accidents show that inattentive driving is the largest contributor followed by speed too fast for road and traffic conditions. The reported known condition of drivers involved in these accidents shows that 1,219 or 78.3 per cent were apparently normal, 45 or 2.9 per cent were classed as ability impaired, 266 or 17.1 per cent had been drinking.

I submit, gentlemen, that it cannot be argued in any way that alcohol plays in any way a major contributing factor to accidents on the highways based on the statistics to which I have referred.

A perusal of the charts and increased registrations and additional miles travelled—that is millions of miles travelled by automobiles—does not show any significant increase in the ratio to warrant any expression used by certain alarmists as "carnage on our highways as a result of the drinking driver." In fact, any such arguments, it is submitted have no foundation in fact. I base that on these two books and the statistics which I have obtained.

In relation to the question of the actions of drivers involving all types of accidents, which excludes fatal accidents, with which I will deal in a moment, the contributing factor in all accidents were as follows: Inattentive driving; did not have right of way; driver lost control; speed too fast for road or other traffic conditions, and finally, other actions.

In fatal accidents, inattentive driving; speed too fast for road or traffic conditions; on wrong side of road; driver lost control; did not have right of way. When you compare the various age groups it is established that the younger drivers followed the same pattern as previous years with inattentive driving; speed too fast for road or traffic conditions; driver lost control and did not have right of way, being the most frequently reported action of the driver involved.

In the age group 65 years or over, failure to yield right of way represented the improper driving action most commonly reported.

The next factor to consider is the condition of the driver and this is important because we have the question of condition involved in all accidents and fatal accidents. The factors are: apparently normal, 192,384, accidents, 88.1

per cent; ability impaired, 3,832 or 1.7 per cent; had been drinking, 13,334, 6.1 per cent; extreme fatigue, 777, .4 per cent; physical defect, 638, .3 per cent; not known, 7,426, 3.4 per cent, making a total of 218,391 accidents.

In fatal accidents you have: apparently normal, 1,219, 63 per cent; ability impaired, 45, 2.3 per cent; had been drinking, 266, 13.8 per cent; extreme fatigue, 14, .7 per cent; physical defect, 13, .7 per cent; not known, 374, 19.4 per cent, making a total of fatal accidents of 1,931.

They go on and say 91.5 per cent of the 218,391 drivers whose condition was classified by the police were "apparently normal". This includes those whose condition was "not known". For those involved in fatal accidents the corresponding future was 82.5 per cent. There were 228 more drivers classed as "ability impaired", and this is an increase of .2 per cent, and 1,685 more who "had been drinking", an increase of .1 per cent over the 1964 figures.

It is submitted to you gentlemen that the increase means nothing when one considers the increase in vehicle registrations between the two years in question. Further, the statistics do not consider those drivers who may have been drinking with a view to committing suicide by an automobile accident to collect on insurance life policies for the beneficiaries. It is noted that those whose condition was classified as "impaired" was made up mainly of the age group 25 to 44 years. In the case of those classified as "had been drinking", it was the age group 20 to 44 which made up the largest share. Personal problems must also be taken into account in assessing the driving ability of a person who is driving an automobile. One must also bear in mind the economic conditions which a person might be operating under which might cause them nervous strain which might also have a bearing in relation to the causation factor of an accident.

In relation to driver responsibility in accidents, it would appear that the younger drivers, 16 to 24 years and the older drivers, 65 years and over were more frequently at fault than the drivers in the age group 25 to 64 years. The drivers in the age group 45 to 54 years showed the lowest at fault rate again in 1965, with the greatest increases being shown in the age groups 16 to 19 years, 25.2 per cent and the 20 to 24 years, 11.4 percent.

Fatal accidents increased over all by 9.6 per cent from the 1964 total. Fatal accidents in Metropolitan Toronto showed a decrease of 6.5 per cent while the larger other urban areas showed increases. An increase of 8.2 per cent was recorded in fatal accidents in rural classifications, with those occurring on secondary roads showing the highest increase.

I am saying to you, gentlemen, that my submission is over and above what is quoted from this report because what I am quoting from these books which I have submitted to the Chairman as exhibits, I have so referred in my brief to you and noted the page number from which the quotation is taken or from which the statistic is taken.

In relation to the decrease in the fatalities in Metropolitan Toronto, one must bear in mind, I submit, that we have a situation there where we have crosswalks which could quite possibly have a bearing on the reduction in fatalities.

In dealing with fatally injured persons, of the 1,611 persons fatally injured in motor vehicle accidents, 619, 38.4 per cent, were motor vehicle drivers; 564, 35

per cent were passengers and 387, 24 per cent were pedestrians. These three classifications accounted for 92.8 per cent of all deaths reported in 1965.

It is suggested in considering the fatally injured figures one must bear in mind that automobiles could be constructed with certain additional safety features which could well help, it is submitted, to reduce the fatality ratio. One must also bear in mind the increase in the purchase of compacts.

A driver driving a compact has a greater risk of death in an accident than a driver driving a large car.

It would appear that in 1965, in relation to the total number of accidents, "ability impaired" in so far as condition of the driver is concerned totalled only 1.75 per cent and "had been drinking" the amount was 6.1 per cent. In the figures for 1964, "ability impaired" in so far as the condition of the driver is concerned, totalled 1.80 per cent and "had been drinking" the amount was 6.16 per cent. These figures, gentlemen, are based on the summary of motor vehicle traffic accident statistics referred to at the back of "Accident Facts for 1965" and the accident statistic figures for 1964 show that in all accidents there was a total number of drivers of 218,391 of which apparently normal were 192,384; ability impaired, 3,832, which amounts to the 1.75 per cent figure.

Mr. WOOLLIAMS: Are those charts pretty lengthy or could we have them part of the record.

Mr. BAZOS: They are very lengthy.

Mr. WOOLLIAMS: Would they be difficult to print, do you think, Mr. Chairman?

The CHAIRMAN: We can put them in as exhibits.

Mr. BAZOS: I was going to suggest, gentlemen, if possible, I might be able to obtain additional copies of these books from the Department of Transport and possibly forward a number of them here because I must say to you that my thinking in relation to the contributing factor of alcohol to the results of accidents and fatalities has been drastically altered as a result of consideration of these figures.

Mr. MCCLEAVE: May I ask you, can it be claimed that these figures are on the conservative side? These are only offenders who have been caught and there is an area there of great doubt. Do you think that these figures should be higher in the case of these drinking offences, drunk driving?

Mr. BAZOS: No, sir. These are the total accidents whether or not there were charges laid.

Mr. MATHER: Mr. Chairman, could I ask the witness a question. Is it his contention that alcohol is not a major factor in traffic accidents apart from fatalities?

Mr. BAZOS: Precisely.

Mr. MATHER: Is he aware of the findings of an impartial body such as the National Highway Safety Council which have figures not only for Canada but the United States. Their figures indicate that in approximately 45 per cent of all fatal traffic accidents, the drivers had consumed alcohol within a few hours prior to the accident?

Mr. BAZOS: I would like to see these statistics. I would like to study them. I am going on the statistics, as I say, that I gathered from the Metropolitan Toronto police department for the last five years which are on the first page of this memorandum and the figures from the Department of Transport for the province of Ontario. All of these statistics and figures to which I referred came from this booklet, "Accident Facts 1965".

Now, going to the 1964-65 report of the Minister of Transport for Ontario we find that the statistics reported on pages 23 to 27 of this report tell a story of continued growth in the use of highways which reflects the over-all economy of this province. The number of motor vehicles and trailers registered in 1964 increased by 4.8 per cent over 1963, making a total in excess of 2.5 million. One item of particular interest in the summary is the reduction in motorcycles of about 2,000 from 1954 to 1964. The smallest number of motorcycles registered since the war years was in 1962 and 1963 when about 7,000 were registered. This number increased in 1964 to 10,000 and the trend for 1965 indicates an increase in excess of 100 per cent.

The variety of purposes for which passenger type vehicles are now used is reflected by the increase of 133,000 or 739 per cent in dual-purpose vehicles. The following table dealing with the categories of passenger vehicles indicates a trend to the compact car and a preference for the eight cylinder motor by purchasers of regular size automobiles.

One should consider it is submitted, gentlemen, the deaths that occur as a result of the increase in the use of compact motor vehicles. I understand there are no statistics available on this at present.

At page 7 of the report the chart shows a sharp increase in motor vehicle registrations and a considerable drop in the fatal accidents, with a drop from the peak in so far as motor vehicle accidents are concerned.

Now, the interesting part of this chart shows that the peak year in fatal accidents per 100 million miles travelled appears to be in 1945 with a continued decrease each year and the lowest figure for fatal accidents per 100 million miles travelled in the province of Ontario was the last figure in 1964, which I respectfully suggest, gentlemen, belies any suggestion about increasing carnage on the highways or increasing deaths from any factor. I am suggesting to you gentlemen that the increase in mileage, the increase in motor vehicles registered—

Mr. MATHER: What page are you on now, sir?

Mr. BAZOS: I am reading from page 7, the statistic figure here which shows trends in motor vehicle registrations and motor vehicle accidents for Ontario.

At page 33 of the report there is noted for the years 1963 and 1964: driving while intoxicated, 1963, 702; 1964, 681. Ability impaired, 1963, 10,240; 1964, 10,580.

At page 42 of the report—

Mr. McCLEAVE: Before you go on, could you give that out of the total number of offences. I think that is the most interesting fact.

Mr. BAZOS: This goes for convictions, gentlemen, and all it provides is convictions. I do believe that the difficulty is when you are talking of convictions or rather the relation to fatalities, I think this is covered—

Mr. McCLEAVE: We would like the figures.

Mr. BAZOS: I did cite them to you personally before from page—

Mr. WOOLLIAMS: In other words, of 15,755 accidents or convictions in 1963, 702 were found guilty of driving while intoxicated?

Mr. BAZOS: The unfortunate problem—

Mr. WOOLLIAMS: The figure of 10,240 is for those driving while ability was impaired, and those driving while disqualified might have been impaired too. That figure is 2,456.

Mr. BAZOS: But what you are overlooking is that these figures include statistics in which no accidents occurred. Those figures, gentlemen, involve charges, all charges. The figures which I quoted previously from the statistics were the figures in relation to accidents and fatalities. As I understand the problem in discussion, it is a question of determining whether alcohol plays a predominant role in accidents and secondly whether alcohol plays a predominant role in fatalities.

Mr. WOOLLIAMS: Of course, we might be very thankful that the police caught him before he knocked somebody over.

Mr. BAZOS: If you will permit me to finish my submission to you, I will be pleased to debate or answer any questions that you might have to put to me.

Before proceeding any further, I would draw your attention to the fact that of the number of prosecutions in our area for impaired driving, the ratio of convictions is slightly over 90 per cent. The unfortunate part is that—and you might do something about this, since you are a member of the Committee—the Dominion Bureau of Statistics, in so far as showing the number of convictions and acquittals involving impaired driving is deficient. All it shows is the number of convictions. It would seem to me that if you are to keep accurate records or correlation records, you should show many people have been charged, how many people have been convicted and how many people have been acquitted. Just because a person has been charged with a drinking offence does not necessarily mean he is guilty. Just because a person has been drinking and charged with an offence does not necessarily mean that the drinking was a contributing factor to the accident because the situation could quite conceivably appear that the accident was caused by the actions of the other party. I am not saying that this applies in all instances, but I am suggesting to you that any statistic that you care to look at—these statistics which I have provided are statistics which I was able to garner in relation to total accidents. This is the criterion you should follow, not accidents upon which charges have been laid. You should consider the over-all number of accidents that have transpired.

The report of fatal accidents by type of collision discloses in 1963, at page 42, 1,222 deaths while you had a total motor vehicle registration of 2,268,320. In 1964 there was a slight reduction, 1,202 deaths, a total reduction of 20 deaths but the total motor vehicle registration was 2,381,219, an increase of almost 113,000 motor vehicle registrations. Yet you have a decrease of 22 deaths.

I respectfully suggest, gentlemen, that if you project your figures for the number of registrations, the amount of mileage travelled by automobile on our highways, you will note that the number of deaths that occur are drastically below the percentage figure that other people might lead you to believe.

In relation to drafting my remarks on this proposed Bill No. C-87, I would suggest to you gentlemen that first of all you should consider who are the people who are going to benefit if such a bill is enacted into law. I respectfully suggest to you that the first people who will benefit will be the automobile insurance companies, because under the statutory conditions of policies there is provided under clause 2, subsection (1):

The insured shall not drive or operate the automobile—

- (a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile.

I ask you to bear in mind what would happen if this bill was enacted into law in so far as the position of insurance companies is concerned to cancel these policies because someone refuses to consent to the giving of a breathalyzer test?

Secondly, I would suggest to you to consider that the next people who will benefit will be the police forces, because their job will be made extremely easy. The offence no longer depends on their going to court, making allegations of evidence, observations—all they have to do is take the man to a technician, force him to give the very evidence against him that will be used in a court of law to convict him and if he does not give it, if he refuses to give it, he should still be convicted of the offence of refusing to give evidence.

The next group that would be interested are the law enforcement bodies such as crown prosecutors or attorneys who, of course, will also be pleased to see such an amendment in the law.

Mr. WOOLLIAMS: It will be good for the defence counsel, though.

Mr. BAZOS: Well, that goes without saying. But in looking at this proposed bill, I can just see ways and means by which I would defend it if it should happen to be enacted. The difficulty of the police in attempting to enforce this law—I will have more to say about that when completing my comments and then by your asking any questions that might come to your mind, I think I can cover the points involved that you might have doubt about.

It is submitted that convictions are obtained in the Metropolitan Toronto area in at least 91 per cent of all prosecutions for impaired driving. Law enforcement is not prejudiced by the present law; for police departments if they wished could as in other jurisdictions take movies of an accused when he is arrested, or have a tape recording of his voice, both of which could be introduced in evidence at trial. I also submit, gentlemen, that the law as it presently stands is doing a good job.

As a member of the Canadian Bar Association, I have been adamantly opposed to any change in the law making a crime what is in essence a social problem, or a medical problem, not a criminal problem as some people would like to have it made out. By the way, what I forgot to mention as the last group that might be interested in seeing this law enacted, are those people who might have a desire to have drinking abolished or, as they like to call themselves, moderates, or have drinking restricted.

Mr. FULTON: What about the public?

Mr. MATHER: What about the drivers?

Mr. BAZOS: In relation to the Canadian Bar Association, gentlemen, there was a report dated February 19, 1965. The members of the committee were, His Honour Judge Harold W. Pope, the district judge of Moose Jaw, Saskatchewan; His Worship Magistrate S. Tupper Bigelow, Q.C., Toronto, Ontario; Walter C. Newman, Q.C., Winnipeg, Manitoba; A. Stewart McMorran, Q.C., city prosecutor, Vancouver, British Columbia; Hazen Hansard, Q.C., Montreal, P.Q.; John T. Weir, Q.C., Toronto, Ontario, and P. D. Isbister, Q.C., Toronto, Ontario.

With the exception of Mr. McMorran, who is a crown prosecutor, gentlemen, I am of the opinion that none of these persons named has been working members of the Criminal Justice Section of the Canadian Bar Association, and in any event have not been members of the Ontario subsection of the Criminal Justice Section which has been adamantly opposed to any change in the law in so far as breathalizers are concerned and have so been for the last two years.

Mr. WOOLLIAMS: What about E. C. Leslie, Q.C., former President of the Canadian Bar Association?

Mr. BAZOS: What has he to do with it. Is he a practising criminal lawyer? Is he a proponent of civil liberties?

Mr. WOOLLIAMS: Yes, he is both.

Mr. BAZOS: Well, we will see.

Mr. MCCLEAVE: And in Nova Scotia to boot, too, which makes him very sensible.

Mr. BAZOS: I do not know where that gentleman comes from. But be that as it may, I draw to your attention that the British Columbia subsection of the Canadian Bar Association also opposed this suggested change in the law.

In 1965, at the annual meeting of the Canadian Bar Association, this recommendation of this report, which was submitted to the Minister of Justice, was withdrawn by him. This year in Winnipeg there was a meeting of the Canadian Bar Association at which the approval of the people who voted at the open meeting was obtained. But I respectfully suggest, gentlemen, that this does not represent a true cross-section of the lawyers in Canada nor does it represent—in other words, these lawyers who voted in favour of this report, and this is what I am referring to now—

Mr. WOOLLIAMS: Are you suggesting they are insurance lawyers?

Mr. BASFORD: I do not know what they are, sir. All I am telling you, is, in my opinion, these members were not working members of the Criminal Justice Section. I do not know whether these gentlemen practice in magistrate's courts, as I have for many years. When I see the effects of people charged with impaired driving, the results that flow from convictions of impaired driving—

Mr. MCCLEAVE: Is that not a matter of correcting the law? The penalties are too harsh. I am not therefore saying that because a man is caught out and then fined because parliamentarians have set certain penalties, that this is all wrong.

Mr. BAZOS: I am sorry, sir, I cannot agree with that argument and if you will kindly defer it, I am nearly finished with this matter. I will then be pleased to debate with you any matter or question that you might wish to put to me.

In relation to this report of the Canadian Bar Association, I wish to respectfully draw your attention to the fact that at page 2 of this report it says as follows:

Your committee considering the existing legislation bearing in mind the principle that if it is not necessary to change it is necessary not to change.

It goes on to say:

The appalling statistics of accidents on the highways of Canada persuaded the committee that it is imperative that there may be a new legislative approach.

I respectfully suggest, gentlemen, this argument or this submission of appalling statistics on Canadian highways as a result of alcohol drinking drivers when one considers the total number of accidents, that if these figures from Ontario are to be believed, no one can question the fact that alcohol does not play a major role in accidents, not does it play a major role, I respectfully suggest, in fatality accidents.

Mr. McCLEAVE: Drive home carefully tonight if there has been a diplomatic reception in Ottawa.

Mr. BAZOS: I will be flying.

Mr. WOOLLIAMS: That is the trouble with many of them.

Mr. BAZOS: Now, gentlemen, the thing that also bothers me very gravely, if you enact this law, is that you will provide a person with a criminal record with all its ensuing consequences and I suggest this is a factor that you should take into consideration.

The subcommittee of the Criminal Justice Section in Ontario prepared a memorandum on the effect of a criminal record upon a person and I am not going to go into great detail, except I suggest to you that if a person is saddled with a criminal record—and this is not a misdemeanour. I understand in California there is legislation which makes it a misdemeanour. The equivalent I would suggest here would be a breach of a provincial statute such as they have in Saskatchewan and Nova Scotia. But it is not a crime in that sense.

Mr. McCLEAVE: Excuse me, this is not correct. The charges in Nova Scotia are laid under the Criminal Code, and not under the motor vehicle act. Mr. MacEwan and I can attest to that.

Mr. BAZOS: Well, gentlemen, my argument is directed to the point of not saddling a person with a criminal record because I feel if it is proven that alcohol has such a substantial effect in accidents, surely — and I am not satisfied that it has yet — the matter can be handled on a provincial level. Surely the appropriate province in relation to controlling the safety of the highways, and drivers, can enact legislation. If you give a man a criminal record just think the trouble he would have if he ever went to get a job involving bonding.

Mr. WOOLLIAMS: Or driving a Greyhound bus.

Mr. BAZOS: Or refusing to take a test.

Mr. WOOLLIAMS: You are talking about convictions?

Mr. BAZOS: Yes. This is what you would convict him of for refusing to take a test.

I submit to you gentlemen that if you give a person a criminal record, you must bear in mind the consequences that would follow if he should ever decide, for example, that he wants to go on a trip or he wants to emigrate, or he has to apply for a licence upon which he might have to disclose whether or not he has had any criminal convictions.

Mr. McCLEAVE: Or a job in the civil service of Canada.

Mr. BAZOS: Yes. This is why as I see it, gentlemen, the question of making it a crime is one thing but the ensuing consequences that flow from it must be gravely considered.

Now, I would also suggest to you gentlemen to consider that if this is enacted, it will subject any person on the highway to the whim of any police officer, whose nature could be at all capricious, to force a driver to submit to a test. Further, think of the magistrate or the presiding jurist. A jurist will not exercise any judgment in determining guilt or innocence of an accused person charged with this type of suggested offence, it is automatic; he is automatically guilty. There is no question of guilt or innocence. The guilt or innocence of the accused will be determined by a machine which I respectfully suggest is subject to variable factors, as outlined by Mr. Smith in the "Criminal Law Quarterly", volume 1, at page 39. It is under exhibit 8, which is drinking and driving, concerning tolerance, the fact the machine can be fooled if a person does not blow into it properly, considering the fact of the time lapse from the time the accident occurs until the time the breathalyzer test is taken. You overlook the possibility that a man could be sober, not be impaired at the time of driving, yet by the time he is required to give a test, the effects of the alcohol could have reacted upon him and he would be classified at that time as impaired. But you would not give him the protection of the fact that he at the time of driving was not impaired. Everyone is familiar I think with the progressive effects of alcohol. I am just suggesting this as an additional factor which might be considered.

In relation to this aspect of variable factors, I noted that in the submissions made by Dr. Ward Smith to your committee, he makes mention, at page 178, of the fact of charges already laid. In our area, what happens when a man is brought to the station? Sometimes the police officer will say to him, "you are under arrest"; sometimes the police officer will say, "come on to the station with me". When the accused is at the station, the police officer will do everything within his power to talk to him. If, for example, there is a factor which in the first place drew the arresting officer's attention to the motor vehicle, he might turn around and say to the suspect, "your tail light is out", and the suspect will get out of his vehicle and go behind the automobile and look at his tail light, which is in fact not out, but the police officer is carefully watching his movements.

When he goes to court the police officer might turn around and say the man was holding on to the car or maybe the man stumbled—there would be any number of factors over and above the question of the extent of alcohol consumption, if any, which could produce similar reactions.

When at the station the man is questioned by the police officer for a few moments, then he is turned over to an expert breathalyzer man. The function of

this breathalyzer man is to persuade in any way, shape or form, without the use of any coercive methods, which I do not think our police forces use in our area, but they use psychological tactics by saying to the accused, "now you would like to go home tonight, would you not? If you will just take this test, you can go home". The man one way or another is persuaded to take this test. That very test, as I say, will be used against him in court and does not provide, for what Dr. Ward Smith says and the British report says, namely that if you are going to involve people in these kind of tests, you should also provide them with clinical examination to rule out the possibility of any physical injuries.

We have had two deaths in Toronto in the last year of people who were mistakenly arrested as drunks, and locked up and they died.

Mr. WOOLLIAMS: You will admit that the breathalyzer test might have saved these people.

Mr. BAZOS: Well, how can you do anything if these people are semi-conscious or they cannot take the breathalyzer test because they are semi-conscious. You cannot put it to a person's face and make him take it if he is unconscious or next to unconscious. For example, a person is out and out drunk. Could you make an out and out drunk take a breathalyzer test? I doubt it.

I respectfully suggest, gentlemen, that in so far as practitioners in the field of criminal law are concerned, who are a defence counsel, I do not know of anyone who is in favour of this proposed amendment to the law. The only people I know that are counsel are crown prosecutors, as a rule, or other lawyers who are in other fields of law which fortunately or otherwise do not give them the opportunity to deal with the people who appear in court charged with these various offences.

I respectfully suggest to you that anyone who is involved in the question of civil liberties, because of the comment that I am going to make shortly, can believe in discretion. If you take a look at the Canadian Bill of Rights, gentlemen, you will see it says:

No law of Canada shall be construed or applied so as to authorize a court, tribunal, commission, board or other authority—

And I think the word "authority" can be construed as a police officer if you consider Section 15 of the Interpretation Act of Canada.

—to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards.

Now, I have heard arguments addressed about the fact that incrimination is only restricted to verbal admissions. This might be so, but I have never heard in our jurisprudence where a man can be made to do something against his will and by doing this against his will he is damned if he does and damned if he does not. If this man takes the test—and it does not take too much alcohol to have the standard that is suggested in the act, and you must bear in mind that alcohol burns off at a fairly reasonable rate of speed. I am hoping you gentlemen will take time to read the articles which Dr. Smith submitted to you because there are certain items in there which will be of interest to you. I do not want to take time to refer to it but there is one aspect of it that I want to refer to definitely.

Mr. WOOLLIAMS: Just on that point, have you ever read the article based on this point in the medical legal journal of 1949 or 1950?

Mr. BAZOS: I cannot say I have. The thing is, gentlemen, Dr. Smith says in his article a person can drink. This is in Exhibit 8. In speaking about the rate of removal, of alcohol, he says this at the bottom of page 69. "A person tends to have the same rate of removal at a given alcohol level throughout a single drinking session. However, on another occasion he might have a different rate and there are wide differences between different people. This rate of removal can make a difference between a person who by spacing his drinks can drink half a bottle of whisky, 13 ounces a day, without exceeding a level of .05 and one who can drink two bottles, 50 ounces a day, without necessarily exceeding this level."

Now, you must bear in mind that this proposed amendment, if it is at all to be effective, if it is to be that the man is impaired the criterion is that he is impaired at the time of driving the automobile, and if the test is going to be made, it should be made almost at the time that he is caught and not wait for a lapse of an hour or maybe two hours, as the case might be, because the results differ. You could quite conceivably have the situation where a man is not impaired when he is driving the automobile and yet impaired subsequently.

I respectfully suggest that each individual has a different capacity as to driving and no person would be impaired if the figure suggested is .05. In our courts in Metropolitan Toronto the rough rule of thumb is that the border line is .15 per cent. Further, our courts consider breathalizers as corroborative evidence. You must consider whether or not a man is impaired, the physical characteristics of the driver, his experiences and his tolerance to alcohol, depending, for example, on how many years he has been drinking. The argument has been submitted that persons who will drive and drink will be reduced if such a law is passed. Respectfully I suggest it will not. I respectfully suggest that the man who will drink and drive will not be deterred and the closest analogy that I can submit to you is in areas where hanging has been abolished. There has been no drop in the death rate. Hanging has been proven not to be a deterrent.

Mr. McCLEAVE: At least there has been a drop in the death rate from hanging.

Mr. BAZOS: That is quite true, I will concede that.

Mr. WOOLLIAMS: Do you think that last statement is true about the record in Great Britain?

Mr. BAZOS: I have not seen any statistics yet upon which I would consider adequate conclusions could be drawn. You must bear in mind that in Great Britain, as I understand it, although I will admit that I am not as familiar with the law there as I would like to be, they also provide for medical examinations or clinical examinations of the person involved to rule out the question of any possible physical injury.

One of the things that I would like to provide to you, gentlemen, for your consideration is this. Assuming the person who conducts the test is a policeman or a qualified technician, if there is a mistake made, do you realize that there could be a suit brought for false arrest or malicious prosecution?

Mr. McCLEAVE: Those are very difficult cases to prove.

Mr. BAZOS: Not necessarily so. The question turns I concede, on the malice, but I also suggest to you that a person has the right to have immunity from arrest. A person also has the right to privacy, to lead his life in any manner, shape and form as long as he is not disturbing his neighbour. If he gets to the point that he is disturbing his neighbour, then the law should step into action.

If you look at the method that is contemplated, which I understand is the blowing into a balloon, you have what I consider to be a ludicrous situation. The test will be conducted by a technician who is a police employee.

I respectfully suggest to you that the statistics that I have referred to you do not at all substantiate the argument that alcohol causes carnage on our highways at all. If you will look at the figures, and take into account the total number of accidents involved, instead of the total number of breathalyzer tests administered, and I understand some of these figures were submitted by Dr. Ward Smith, I think that you will find the actual reason for the increase in deaths is the increasing number of motor vehicles which are presently using our highways and are causing enormous problems of traffic congestion in larger metropolitan areas.

Let not the age of the machine invade our courts of justice and deprive an accused person of the concept of law which has existed for many centuries that every man is innocent until he is proven guilty beyond a reasonable doubt. Let us not make of our courts a forum for forcing a man to give the very evidence which will be used to convict him against his will, and convicting him of a crime as well if he refuses to provide the evidence to convict himself of another crime. This would be contrary to all the principles of British justice and would be contrary to the principles of jurisprudence that have grown over the years in our Canadian courts. What I say to you gentlemen is do not give the evidence to convict him of a crime. This is the argument that I am putting to you. It is one thing that you might have a provincial matter. If you believe in the argument that to drive is a privilege and that the right of the province to control the highways and the issuance of licences, is within the exclusive jurisdiction of the highways people, surely they should be able to determine who should drive. The provinces should be able to enact the necessary legislation that is suggested should be enacted in this bill.

Mr. McCLEAVE: What about the section of the British North America Act which makes criminal behaviour a matter of federal jurisdiction.

Mr. BAZOS: Now, there is a point if you take the Lord's Day Alliance Act—at one time they used to think that drinking was such a heinous act that it endangered the population and the morals of the country. The act provided for a delegation of authority to certain provincial laws and as you say the question is, is this criminal legislation?

Mr. WOOLLIAMS: In Saskatchewan it is.

Mr. BAZOS: Well, I am submitting to you that it is not.

Mr. WOOLLIAMS: We have the Canada Evidence Act and the provincial evidence act. Both can legislate in matter of evidence, can they not?

Mr. BAZOS: Right. I say to you, what is the issue here to be considered, and is the issue a problem that has to be made a crime, or is the issue a matter that can be determined by a provincial enactment if you feel it necessary to be done?

I say to you gentlemen, in conclusion, that we should spend our time in a more constructive fashion to advance the dignity of man, to protect the rights of man, rather than make a crime of something from which tragic consequences could flow of which the average citizen of this country is totally unaware, if this bill is enacted into law.

I may say to you, a few years ago I happened to be listening one night, while I was in bed, to an open air program from a Hamilton station. As it turned out, they were discussing the question of breathalizers. Over a period of almost two hours there was not one person who phoned into that radio station who was in favour of compulsory breathalizers, not one. I suggest to you that we have a situation here in which one would think a very subtle form of brainwashing has been attempted by certain vested interests.

Mr. McCLEAVE: You are saying Mr. Mather supports vested interests?

Mr. BAZOS: I do not know anything about Mr. Mather's outside interests. I am not suggesting anything at all. If this matter is that important—and I do not think that anyone will question that it is—why should this bill not be emblazoned in the newspapers across the country and let the average citizen find out what he is actually letting himself in for.

Mr. McCLEAVE: Mr. Chairman, we cannot tell whether or not the witness has come to the end of his brief, but I gather that he is now attending on various opinions. I think we should have the right to question him.

Mr. BAZOS: One statement, that is all. I say this to you. Why do you not take this bill out of this Committee, draw it to the attention of the public, solicit, if you would, the opinions of the average individual and if the average individual says to you, your constituents say to you, "we think you should pass this law or we think that this is a proper law to be made a crime," then recommend that it should be made a crime. If the figures which I have submitted to you—and I have no doubt about the accuracy of them—I say to you that someone is at fault here and I say that the true state of affairs in so far as accidents, deaths and property damage, as a result of alcohol are a contributing factor, have not been properly and fully put forth to you.

Mr. McCLEAVE: Mr. Chairman, we have a reporter here from the Canadian Press who is reporting the doings of this Committee across Canada. I remind the witness that we have a job to govern; people have elected us to play our part in the government of this country. The suggestion to throw it open to referendum or public opinion in some way strikes me as utterly false. If we make a mistake in our judgment here our voters will be the first to let us know by seeing that the next time you appear on parliament hill we are not here.

Mr. BAZOS: Did you hear my remarks, sir? Instead of misquoting me, I said consult your constituents. I did not say anything at all about a referendum.

The CHAIRMAN: What you are suggesting, Mr. Bazos, is entirely beyond our terms of reference. Our function is to consider a bill which has been debated in the house, obtain evidence and report back our views in respect of it.

May I take it that your presentation is completed? You are now ready for questions?

Mr. BAZOS: Yes.

The CHAIRMAN: Before opening the meeting for questions, may I have a motion that the submission and exhibits by Mr. Bazos be appended to today's proceedings. Is it agreed?

Agreed.

Mr. Bazos, the meeting is open for questions.

Mr. WOOLLIAMS: I would like to ask a few questions. I know it is Mr. Mather's bill, but I have a few leading questions which I think might just lay the foundation.

Now, I would like to ask this question. The question of a breathalyzer goes to the evidence as to a man's acquittal or conviction. Is that not what we are considering today? It is a matter of evidence.

Mr. BAZOS: Did you say the use?

Mr. WOOLLIAMS: Yes, the use of a breathalyzer is really a question of evidence. Boiling it down—you have a lot of statistics and some of them I was very interested in, and of course we can all produce certain statistics. But to get down to some guide lines why we are here, it really is a question of evidence whether this is the right method or evidence we should use in a court of law. That is really what we are talking about, is it not?

Mr. BAZOS: Not quite.

Mr. WOOLLIAMS: Is that not the point of it, sir?

Mr. BAZOS: I respectfully suggest it is whether you will compel a person to do something against his will.

Mr. WOOLLIAMS: But it is a question of evidence, is it not?

Mr. BAZOS: No, sir; partly.

Mr. WOOLLIAMS: Well, what part is not?

Mr. BAZOS: Can you show me—

Mr. WOOLLIAMS: Just answer the question, what part is not evidence?

Mr. BAZOS: What you are putting to me is a sophisticated question because you are using the term "evidence" in a generic sense.

Mr. WOOLLIAMS: I am using it in a legal sense.

Mr. BAZOS: What you are suggesting is you are trying to boil it down to a *fait accompli*; that this bill will be passed and the end result of it is that it would be used in a court of law as evidence.

Mr. WOOLLIAMS: Mr. Chairman, just so the witness will appreciate what some of our vocations are as far as members of the Committee, I am a lawyer. I might tell you this, and I only say this in a way to get some idea what I am asking. I have been practising about 22 or 23 years; in the early part of my practice I defended many people on impaired driving. I was very interested in your brief and I can see that it was presented as a true defence counsel—and that is no disrespect to you. A good many things you said in your brief in reference to the infringement of our civil rights, I would agree with, but I would like to get down to a few guide lines in our argument on the bill. That is why I ask you this. It is a question today whether we should use this breathalyzer as some form of evidence in a court of law before a magistrate or in some other court? Is that not correct?

Mr. BAZOS: That is one of the questions, yes.

Mr. WOOLLIAMS: Yes. Do you think that the breathalyzer is as good as a blood test; is it as accurate?

Mr. BAZOS: I am not an expert, but from the little I have read I understand Dr. Rabonovitch has used one way, Dr. Ward Smith has used another way. From my own personal knowledge, the breathalyzer works relatively well.

Mr. WOOLLIAMS: I might say that in Sweden they have the blood test. Some of the experts say that in the blood test you are so liable to have a judicial error. With the breathalyzer test, if you had a meal or certain bodily conditions, it may not be as accurate as the blood test. But you are not able to pass an opinion on that?

Mr. BAZOS: If a man takes a meal, all it would do is delay the ingestion of alcohol into the system. Now, I do not pretend to be an expert. I think the Committee no doubt will obtain views.

I may say that there is some argument. I noted in the exploratory notes of Bill No. C-87 something about the fact that compulsory blood tests would constitute an unwarranted and unjustified trespass of a person.

Mr. WOOLLIAMS: Would you say whether there would be much difference between the invasion, referring to what you just said, of the blood test and the breathalyzer?

The point I want to make is this. I take it that you as a citizen, apart from being a lawyer—if a man has according to the law done something in which it is a matter of evidence whether he be convicted or not but if he has done something contrary to the law as a citizen of the country you would expect him to be brought before a court and convicted.

Mr. BAZOS: No. I say he should get a fair trial.

Mr. WOOLLIAMS: Let me just finish there. I want to make sure what your evidence is, because this I think would go to the credibility and your ability to sell us an idea. Are you saying then, that you are against a system where an individual has broken the law and the court of law has found him guilty of breaking that law, that you are against that conviction?

Mr. BAZOS: I do not understand your question.

Mr. WOOLLIAMS: Well, basically it is this. Are you against a person being found guilty if he has broken the law?

Mr. BAZOS: If a person is legally found guilty by a court properly constituted and by protection of his rights that the law affords him, no one is against it, least of all myself. The law is made to be obeyed and no one is above it.

Mr. WOOLLIAMS: Do you think that the best evidence should be produced at a court of law to come to that conclusion?

Mr. BAZOS: In relation to what sort of charge?

Mr. WOOLLIAMS: Any charge. Drunk driving, intoxication, murder, any charge you want to mention. The best evidence should be there.

Mr. BAZOS: Yes, I will concede that as a general principle. I know what you are leading to. Go ahead.

Mr. WOOLLIAMS: That is the trouble with lawyers. I will be awful nice to you, sir, but lawyers make poor witnesses and sometimes they are not too good at cross-examining either. But let us come back.

An hon. MEMBER: Speak for yourself.

Mr. WOOLLIAMS: Do you feel that police evidence, and you must have heard it because you have defended many cases I take it on this subject because you are an expert—

Mr. BAZOS: I do not consider myself as an expert.

Mr. WOOLLIAMS: —but when a policeman gets up and uses the old method, the 3-F method, slurs his words, he stammers and he staggers and often the magistrate accepts that as the best effort that the person in question is impaired. Do you think that kind of evidence would be as good as scientific test determining the amount and content of alcohol in the bloodstream of a human being?

Mr. BAZOS: Are you using that as a contrasting evidence, because as I understand the law, the use of breathalizers today is corroborative evidence. If the evidence of the police officer is uncontradicted the magistrate may accept and make the finding of guilty; if the accused gives evidence or has other witnesses, then you become involved in the question of whom the magistrate is to believe with the various questions applicable; but this is the function of the magistrate and if you put this machine in you will take away the judicial discretion which the magistrate exercises. You will make a machine determine the guilt or innocence of a person. You will make a machine which is subject to foibles of any decent machine to determine guilt.

Mr. WOOLLIAMS: Let me put this to you. If that machine, you might call it a machine either by blood test or breathalizer, is accurate, then is there anything wrong with the magistrate or a judge exercising that judicial discretion on the best evidence?

Mr. BAZOS: What is your question based upon, on the old law or on this law?

Mr. WOOLLIAMS: On the old law.

Mr. BAZOS: If the machine is accurate, and that is your premise.

Mr. WOOLLIAMS: Yes.

Mr. BAZOS: If the machine is accurate, and if the accused voluntarily consents to give that evidence.

Mr. WOOLLIAMS: Well, I appreciate that. I am taking all those things into account.

Mr. BAZOS: Well, nobody will argue with you about the accuracy of this machine, if it is so accurate, if that is what you are leading up to.

Mr. WOOLLIAMS: Well, you wait and see what I am leading up to. If you answer the questions instead of drawing inferences, you would be much more helpful to me and maybe to the Committee.

The CHAIRMAN: We are short of time.

Mr. McCLEAVE: Yes, but if you fellows would come out of that corner, and do-si-dos in the centre of the ring.

Mr. WOOLLIAMS: Well, I will not take much more time. I am going to ask one or two more questions. If a person was charged with impaired driving or drunk driving and was not intoxicated, would not the test of a breathalizer or a

blood test be the kind of test that would protect the accused rather than destroy him?

Mr. BAZOS: That is the argument that is propounded by police authorities.

Mr. WOOLLIAMS: Would you agree with that argument?

Mr. BAZOS: Yes, certainly. Of course, I agree with it.

Mr. WOOLLIAMS: Then, at least, apart from the terms and conditions of the bill, taking the breathalyzer whether you use it as corroborative evidence or use it as the evidence, the best evidence, or the blood test, it can be said that these tests, although they may be an infringement on the civil rights, and we have lots of acts that do certainly infringe on the civil rights of people, could be used as a protection of the individual rather than evidence against him in many cases?

Mr. BAZOS: Well, let us qualify your question because I am not so much caring about the civil rights. I am caring about the rights of criminal law, the right and the presumption of innocence of an accused. What you are going to do to me is bring in the fact, and there is no way that you can break away from it—what you are trying to do is say to me, I will concede everything you say as being correct but you cannot get away from the very point that what you are trying to do is make a man convict himself.

Mr. WOOLLIAMS: Yes, but you have already admitted, or maybe I misunderstood you, that if a person is charged with an offence and the best evidence is produced in court, and the court judges on that evidence, and the person is convicted, you say that if anybody is convicted in that manner that you go along with it; that he is properly convicted. You have agreed with that, have you not?

Mr. BAZOS: Your argument is based on the assumption that that evidence was consented to by the accused. This is where we part company because I am maintaining the position that the accused does not consent to the giving of this evidence. He does not consent to the administration of a breathalyzer. Your whole argument is premised on the assumption that the accused consented to this or there is a statutory obligation. My argument is that no man should be obliged in this country to submit to a breathalyzer.

Mr. WOOLLIAMS: In other words, what you are saying—

Mr. BAZOS: To make it a crime.

Mr. WOOLLIAMS: Yes, just a moment now. What you are really saying, and I might go along with you in this regard, that no one should be forced to confess either by words, deeds or actions or by scientific equipment of an offence. That is your point.

Mr. BAZOS: That is right.

Mr. WOOLLIAMS: That is your full point you have made this afternoon.

Mr. BAZOS: My full point is also that statistics prove, and contrary, with all due respect, to the allegation you made concerning the fact that I submitted this brief as a defence counsel, if you read my brief, you will note that my notes show both sides of the coin. My notes show the accidents and fatalities, both ways, property damage and fatalities, and all I say to you, sir is that you read these books and if your thinking is still the same, that alcohol is a major con-

tributing factor to fatalities of a major nature, and also in property damage collisions, as I told you before, from the summary of motor vehicles statistics, and I do not care who looks at them, you cannot escape the fact that these are as comprehensive figures as I have ever seen. You cannot cut them, and I challenge anyone's statistics, highway traffic council or anybody's statistics because I say they are based on misinformation if they allege anything that is contrary to these statistics which are put out by the Department of Transport for the province of Ontario, and the statistics of the Metropolitan Toronto Police Department. I say to you—all right I will leave it at that.

Mr. WOOLLIAMS: Just one more question. I have practically come to the guidelines that I wanted you to. One statement that you made was that you felt it would help the insurance companies. If you can cut down the accident rate surely that cuts down the cost of insurance, and therefore, the cost of the premiums and it will be reflected upon the cost of insurance to the general public.

Mr. BAZOS: Sir, your question, if I may respectfully suggest, is based on a generalization, if you are familiar at all with accidents. The accidents between the 16-year olds and the 19-year olds are a greater factor; in fact, the accident premium for people from 16 to 19 years of age, and 19 to 21 is much higher than for a more mature driver.

Mr. WOOLLIAMS: Mr. Chairman, I probably have many questions but I know that it is Mr. Mather's bill and I would like to turn over the questions to him if he wants to use the opportunity.

The CHAIRMAN: Do you want to defer to Mr. Mather, because you had your hand up first, Mr. McCleave?

Mr. McCLEAVE: I have only one question, Mr. Chairman, and before I ask it from this corner, our witness has met a great number of questions during the delivery of his brief, I will not apologize for that part, although I must say he seems to have the fixity of purpose of an Old Testament prophet. But the witness I think has made a very compelling point against people, under our system of law, being compelled to hang themselves, as it were, so I ask the witness this. Section 223(2) of Mr. Mather's bill reads "Where a law enforcement officer has reasonable and probable grounds for believing that a person has committed an offence provided for in Section 222, he may require the said person to give a sample of breath". Would he have his objections met by putting in after the words "believing" either "and has given a warning" or "has made a statement to the person setting forth the reasons for which he is asking that this test be applied". For example, the officer could come up and either give the warning or he could say, "Mr. Driver, for the last mile I have followed you and your car has weaved all over the road, and I have a suspicion that your ability to drive is impaired and I therefore, ask that you give consent to a breathalyzer test." Supposing he put in either one of those two riders, the warning or the requirement that the police officer state to the possible accused on what grounds he is asking for that test, would either one meet your objections?

Mr. BAZOS: I do not think it would add anything to the words "reasonable and probable grounds" because if the peace officer has reasonable and probable grounds he has the right without considering the rights of the suspect to do what he as a police officer wants. By adding the one, you said a warning.

Mr. McCLEAVE: A warning.

Mr. BAZOS: And the second one was a requirement explaining to him—

Mr. McCLEAVE: A statement on what grounds he bases his reasonable and probable grounds of belief. Let me put this forward to you.

I want to recall an earlier part of your testimony before us this afternoon where you said you were afraid of the capricious acts of a police officer who would come along and bring a man before a breathalyzer machine for any or no reason at all. Here I am giving you a solution, a way out. The police officer has to make his point before he can ask the possible accused to go along. Does that not solve your problem, sir?

Mr. BAZOS: No, I do not see how it would. May I suggest that you follow it through for the moment and see what would happen. In the first place, I submit that it would be superfluous because in relation to the determination of the decision on the part of the police officer to have the man submit to test by the addition of the warning or the setting out of the requirement, it would not alter the police officer's viewpoint. It would not alter the possible position of the guilt or innocence of the accused because he still is not free.

Mr. McCLEAVE: I grant all those points, but what about vis-à-vis the accused so that he knows where he is standing.

Mr. BAZOS: Well, from that point of view—

Mr. McCLEAVE: This is the point I am trying to make, that it can be brought home to the accused what he is in jeopardy of and he may very well say, "Sir, I refuse to take the breathalyzer test".

Mr. BAZOS: If he refuses to take the breathalyzer test, as I interpret section 224, he is guilty of an offence.

Mr. McCLEAVE: Well, I hope we can persuade Mr. Mather to cast that one out because I think that is very bad law indeed.

The CHAIRMAN: May I interrupt now. I have to leave now, to be in the house and I would ask Mr. Forest if he will take the chair. I know that there are more questions from Mr. Mather and probably others. Is that agreeable?

Agreed.

The VICE CHAIRMAN: Mr. McCleave, do you have a further question?

Mr. McCLEAVE: No, thank you very much, Mr. Chairman, I think I have made my argument and the witness has given me his opinion.

Mr. BAZOS: May I add something since I understand now what you are driving at. You are suggesting that by the man giving the warning, if the accused refuses, he would not be guilty of any offence.

Mr. McCLEAVE: Oh, no, I am not saying that; he would not be guilty of the offence of refusing to submit to a breathalyzer test. He could still be arrested by the police officer who would use the traditional methods now used in court either to bring a conviction or an acquittal.

Mr. BAZOS: Of impaired driving.

Mr. McCLEAVE: —of impaired driving, yes.

Mr. BAZOS: What would happen, may I ask, if this warning was given? Can this evidence of the refusal, assuming that there is a charge of impaired driving, be used against the accused?

Mr. McCLEAVE: The same law would apply in that case, I suggest, sir, as would apply in any case where warning is given and the accused stands mute. You cannot bring that—

Mr. BAZOS: I am going forth, as I understand any proposed suggestions as to amendments or revisions.

Mr. WOOLLIAMS: But there is one point, Mr. Chairman. Take a murder case where you have a confession. You may have an illegal confession but as a result of that confession he shows you where the instrument was used to kill the person in question. The confession is ruled out but as part of the *res gestae* the rifle goes in. I have had one of those cases. So what he is really driving at is that the question might be that through duress the man was asked to take a breathalyzer test or a blood test. That might be ruled out but some fact or some other element could be ruled in which could be used as corroborative evidence against him.

Mr. McCLEAVE: Yes, he might say I had only four drinks of Aunt Minnie's old parsnip wine. And down they go to see Aunt Minnie and that is the end of the case.

Mr. WOOLLIAMS: Just before we turn the questions over, it is five minutes to six o'clock, and maybe some of us have quite a few questions to ask. Are we going to proceed tomorrow with this witness?

The VICE CHAIRMAN: If we could impose on him to stay over, or if we could wind up the questioning. I think Mr. Mather who is the proposer of this bill should have a chance to ask a few questions.

Mr. BAZOS: If it would be of any assistance, Mr. Chairman, I strongly believe in the figures I have submitted to you concerning statistics. If at all, I can be of assistance to the Committee, I am motivated primarily in my desire to see if possible that this bill does not pass, and if by staying over for another day additional questions may be asked of me, I am in the hands of the Committee.

The VICE CHAIRMAN: We thank you for this offer but I believe Mr. Mather is the last on the list. I understand committees are not sitting on Friday. If need be we would call on you back if it is agreeable, but maybe we could wind up the questioning by having Mr. Mather ask his questions now, and we could go on for a few minutes longer if necessary.

Mr. MATHER: If it is agreeable to the Committee, I am one of the few non-lawyers represented here, not entirely because of that fact but perhaps my questions will be shorter than some have been previously. I have only about three or four questions.

Mr. WOOLLIAMS: Perhaps the witness will appreciate a layman's cross-examining better. He resisted us a little.

Mr. MATHER: I hope it will be better.

The VICE CHAIRMAN: I was trying to close off a few moments before and will follow your questions with trepidation.

Mr. MATHER: Mr. Chairman, the witness has agreed that his contention is that alcohol is not really a major factor in auto accident fatalities. He has

presented figures to support that point of view. That contention and the figures are almost at entire variance with other contentions and figures we have had from impartial people before him. However, skip that for the present time.

I think I am right in saying that the witness believes that drinking and driving is really a medical problem, as much as if not more so than a legal problem. Is that so?

Mr. BAZOS: Dealing first of all with your first contention, I am not submitting figures to you. I am submitting reasons as given by a government department.

An hon. MEMBER: We were doing the same thing.

Mr. BAZOS: Well, sir, I have not seen them. I have made a search, I may add, for additional records and information that you speak of, and these were the only statistics that I could find. The statistics from the Dominion Bureau of Statistics would not lead to anything so far as I am concerned in helping me submit any additional information to you. These figures are not something that I dreamed up out of a hat. These figures are substantiated by statements prepared by the government and, frankly, I have no reason to suspect them. They seem to correlate percentagewise with the Metropolitan Toronto figures, and until such time as I see something to the contrary, I am prepared to accept these figures for what they are. I am sorry, sir, I missed the second part of your question.

Mr. MATHER: The second point that I raised was that I thought I was right in saying that you believed the problem of drinking and driving is a medical one as much as or perhaps more than a police or legal one.

Mr. BAZOS: Medical or social, sir.

Mr. MATHER: On that point, I wonder if you are aware that the subject matter of this bill is supported by the Canadian Medical Association and also that the British Medical Association supports very similar legislation in Britain.

Mr. BAZOS: All I can say to that, sir, is that they are not lawyers. They are not aware of the ensuing consequences that would flow if this bill was enacted into law.

Mr. MATHER: You have said you were aware of the fact that the Canadian Bar Association has gone on record as supporting this type of legislation. I know that you do not agree with them but you are aware of the fact that the lawyers in number have gone on record as supporting it.

Mr. BAZOS: May I suggest that what has gone on record is the council of the Canadian Bar Association this year. In 1965, the membership forced a withdrawal of the bill from the Department of Justice. The criminal justice section of Ontario for two years running have been adamantly opposed to compulsory breathalizers, making it a crime, that is. The question whether it should be left open for a regulatory matter on a provincial basis has not been decided upon because we were not unanimous on that aspect. But we were unanimous in the fact that we did not wish to see compulsory breathalizers made a crime. As I understand it, and speaking to Mr. Sam Toy who was the chairman of the committee in British Columbia in 1965, he, too, and his group, were also adamantly opposed to compulsory breathalizers.

What happened this year—and I can refer to the proceedings of the Canadian Bar Association for the previous year when the matter of a resolution

was that it was to be reported to the various subsections and then they were to report back. What happened was that they sidetracked it this year.

The resolution, and I am quoting now from the proceedings of the Canadian Bar Association, Volume 48, 1965, as to the amendment, because there was some question as to what actually happened; the resolution from the civil liberties section was that the recommendation of council to the Minister of Justice on behalf of the Association be withdrawn. The amendment was to the same effect that the recommendation be withdrawn and that the matter be referred for further study to the appropriate sections and subsections, at the next annual meeting, for further discussion by our various subsections and presumably reports from them will come in at the next annual meeting. Now, going on with that.

Mr. WOOLLIAMS: What date is that?

Mr. BAZOS: This was at the annual meeting in 1965, when the report was withdrawn which the council had passed and submitted to the Minister of Justice without submitting it to the membership at large.

What happened this year was that I went to Winnipeg to the meetings and it was not discussed through the various sections and subsections in the way that the constitution provides that it should be brought up. Instead they put it on the agenda for an open discussion on Tuesday. None of the lawyers were there that were concerned in reality about this problem. I say to you that any recommendation of Canadian Bar Association meetings that purports to speak for all the Canadian lawyers that are members thereof, is not correct. In my view it is the saving of face of the council of the Canadian Bar Association because they whip-sawed through this report, bearing in mind that they, too, I respectfully suggest, were confused by the appalling statistics on highways, the casualty drinking driver problem.

Mr. MATHER: Mr. Chairman, it seems that the witness, as with his figures which are at variance with the major authorities, so with his feeling about the Canadian Bar Association; the fact remains that whether he likes it or not the bar association is tomorrow presenting an argument to the Justice Department in favour of this type of legislation.

Mr. BAZOS: Tomorrow, sir?

The VICE CHAIRMAN: They will appear next Tuesday.

Mr. MATHER: Not here, but they are meeting with the Justice Department.

The VICE CHAIRMAN: I just wanted to mention that representatives of the Canadian Bar Association will be here next Tuesday morning.

Mr. MATHER: That is right, but as I understand it, in the meantime they have a delegation to meet with the Justice Department in line with the decision in Winnipeg.

Mr. Chairman, the witness has said that, aside from the fact that he believes at least, that alcohol is not a major factor in traffic deaths and that he disputes the decision by the bar association at Winnipeg, in some way this legislation that I propose would interfere with civil rights or civil liberties. In that line he has quoted the Canadian Bill of Rights and I want to ask him if he is aware of the fact that a very notable supporter of the Canadian Bill of Rights, in fact, the

main author, Mr. Diefenbaker, at page 4401 of *Hansard* has this to say about this type of legislation.

"I am not going into the chemical arguments now although I am in a position to do so. There are those who will say that it means some invasion of liberty. Looking at it from the point of view of one who, with few exceptions, has invariably been engaged on the defence side, my answer is that I do not believe any questions of liberties of the subject arises of the person who has been in an accident which was obviously due to his negligence and who apparently is under the influence of liquor is asked to breath into a balloon with the view of determining once and for all the question whether or not the degree of his intoxication was such as made it dangerous for him to be on the highway."

I do not know if he was aware of that statement but I put that on the record in relation to the assertion that this type of legislation would be contrary to the Canadian Bill of Rights.

Mr. WOOLLIAMS: May I just speak to that a moment, Mr. Chairman. The Canadian Bill of Rights is mainly an act of parliament. It was not a constitutional change, and if an act of parliament spells out that it is going to exempt that act from the Bill of Rights, you can change it like that. That is one of its great weaknesses, because unless you have the provinces consent, and we had evidence given at that time to the Bill of Rights itself, it would never be a constitutional change. Therein lies the weakness of the Bill of Rights.

This act is saying this act will exempt it from the Bill of Rights, and then it will be outside of the Bill of Rights, and that is always what we have to guard as parliamentarians.

Mr. MATHER: I do not know if I am in order in asking Mr. Woolliams a question but if I am it is this. Would he not agree that Mr. Diefenbaker is a noted defendant of civil rights and liberties?

Mr. WOOLLIAMS: I certainly would.

Mr. MATHER: Would he not agree from what I have quoted, from what he said, that he supports this type of legislation?

Mr. WOOLLIAMS: I would not like to speak for him. That is one thing I have not tried to do.

Mr. MATHER: I think that his words are reported here from *Hansard*.

Mr. WOOLLIAMS: He probably did take that position. There again there is a reason why he took that position.

Mr. MATHER: I want to ask the witness what he would consider—

The VICE CHAIRMAN: Sir, this first question about civil rights—

Mr. BAZOS: I would appreciate very much if Mr. Diefenbaker was made aware of the statistical figures and the percentages that have been outlined here in these government figures. One must bear in mind that a man of his stature and no doubt extremely busy schedule, might not have had the opportunity yet to sit down and weigh the full consequences and implications of this bill until he has seen the benefit of this Committee's deliberations and I think that to attribute a statement of a leader of a party, either of the Liberal, Conservative or New Democratic or Social Credit, or any other parties, if I have omitted names

inadvertently, my apologies. Creditistes, I did not know how to pronounce it correctly and I did not wish to make an error. I think that is the duty of this Committee, and I am certain the Committee will look into the matter completely.

All I am suggesting, sir, is that I am presenting to you the views, the figures that I have acquired and my opinions. Mine are one person's opinion. I am not at all suggesting to you that my opinions are the correct views. I am only saying to you that the opinions I have expressed here today are my own personal views, based on my own experiences, based upon my own research. That is as far as I can go.

Mr. MATHER: I have one more question, Mr. Chairman. In relation to what has been said about the possible interference with the legal rights of the suspect in regard to the giving of evidence, I wanted to ask the witness if he would comment on this very brief statement of Mr. Justice E. L. Haines of Ontario, who says:

"Today a motorist must identify himself by producing his operator's licence, produce evidence of ownership of the vehicle so that all may know if it is stolen, prove his financial responsibility, permit a mechanical inspection of the vehicle as to its fitness, report any accident involving personal injury or property damage over \$100. He must remain at the scene of an accident and he must offer assistance to the injured. These are all exceptions to the so-called right to remain silent, and they were created in the interest of public safety. Identity of the driver and owner, proof of financial responsibility, safety of the vehicle, these are secondary compared to the physical fitness of the driver. Why should we not take the step to ensure true disclosure of that fitness when it has been affected by alcohol?"

I wonder if the witness would comment on that statement.

Mr. BAZOS: What was the first line of that quotation, sir?

Mr. MATHER: Today a motorist must identify himself by producing his operator's licence, produce evidence of ownership of the vehicle so that all may know if it is stolen, or if it is not stolen. He must prove his financial responsibility and he must permit the mechanical inspection of the vehicle as to its fitness.

Mr. BAZOS: Yes.

Mr. MATHER: Report any accident.

Mr. BAZOS: My understanding, and I am subject to correction by you, Mr. Woolliams, is that there is an obligation under the law to make a statement as to who is the driver of an automobile but in a criminal prosecution, if any evidence is to be adduced against the man over and above this, there has to be a *voir dire* to determine whether this statement can be construed as free and voluntary under the law.

Mr. WOOLLIAMS: What you are saying is, and I agree with it, what is right under a quasi criminal offence under the Vehicles Act and what is right under the Criminal Code are two different and distinct things and the evidence can be differentiated.

Mr. BAZOS: This is the point at issue here you are giving a man a burden: the law protects ordinarily the evidence to be given in a quasi criminal offence which is a breach of a provincial law and gives the courts the right to determine by what is called a *voir dire* which is a trial within a trial the admissibility of

any additional statements made by a man which could be construed as of an incriminatory nature. The thing that bothers me very greatly about this, sir, is that the law has acknowledged for years that a man may not be required to give a statement. There has been a differentiation between voluntary statements as being involved in the question of self-incrimination, but the taking of a breath tests as not being incriminatory because it is not verbal, and I think that distinction is highly fallacious because what is the effect of giving the breathalyzer is that it will incriminate the man. It will give the very evidence to convict him.

An hon. MEMBER: In many cases it does the very opposite.

Mr. BAZOS: No, sir, I respectfully suggest that it does not because if you stop to reason for a moment, what are the factors which require a police officer to stop a suspect except that there is something about the automobile or the driver which renders him, the driver, suspect. It arouses the suspicions of the police officer. I have figures here for Ontario, 1965, and it would appear that in only 9 per cent of the tests, no charge was laid. I am referring now to the fourth page of the statistics from Exhibit No. 6; this is for the year 1965. For the year 1964, no charge was laid in 11.2 per cent of the tests; in 1963, 10.5 per cent of the tests; in 1962, 11.2 per cent of the tests; and in 1961, 10.4 per cent of the tests.

I respectfully suggest to you, sir, that in these tests—I would assume, of course, the bona fides of the arresting police officer, on the police officer that brought the man in for the test—he had reasonable and probable grounds to warrant having requested the man to submit to a test. In only a minute percentage of these cases, was the test favourable, the figures are in the neighbourhood of 10 per cent, and surely, sir, the figures of 10 per cent indicate a peculiar amount of correlation when one views it with the purpose behind the breathalyzer which is to get evidence.

Mr. MATHER: My idea would be that when the machine finds 10 per cent of the suspects not guilty or not impaired, it substantiates my contention that the machine is an impartial and honest machine.

Mr. BAZOS: No, sir.

Mr. MATHER: My contention is that even the figure of 10 or 11 per cent in cases where a man is suspected of impairment and being questioned as you suggested, would indicate the impartiality and scientificness of the machine. Because as you have suggested, there must be some reason for his being suspected and in at least 10 per cent of the cases, using the machine, he is freed from that suspicion which he might not otherwise be by the verbal or physical evidence.

Mr. McCLEAVE: I think the witness has already stated the type of operation used in marginal cases by the policeman so, obviously, Mr. Mather has made the correct point. Sometimes the machine would get the man, and the other times it would send him out free.

Mr. MATHER: One final question this time, sir. I wonder if the witness is aware of the fact that in the United States there are now 40 states with this type or similar type of legislation that is, including those who have implied consent laws? "Implied consent laws" means that when you go to get a motor licence you

imply your consent to drive safely to the extent of submitting to a test of this type.

Mr. BAZOS: Well, that is in a sense a provincial law. A state law in the United States is what is classified as a misdemeanour. It is not a felony. It is not a breach of a federal statute. What you're planning here sir, is a breach of a federal statute. In the United States these breathalizers, in these states that you are talking about, sir, they do not make it a crime.

Mr. McCLEAVE: Excuse me, is it not a fact though that the criminal law in the United States is a state responsibility and not a federal responsibility, as distinct from the situation in Canada?

Mr. BAZOS: The question of determining whether it is a misdemeanour or a felony, as I understand it, sir, depends upon what statute is violated.

Mr. McCLEAVE: It is still though the criminal law. Most criminal law in the United States is a state matter. You only get into federal matters where you are hauling prostitutes or people for immoral purposes across the state boundaries.

Mr. BAZOS: I am assuming for the purposes of this discussion that a violation in these individual states for this breathalizer thing is a misdemeanour. If I am in error, and they class it as a felony, then it provides another argument.

Mr. WOOLLIAMS: Your best answer to that question is this. In France, you are guilty and you have to prove yourself innocent. Just because they have it in 40 states in the United States does not make it a good law.

Mr. BAZOS: No, sir, in the United States they have the Escabedo case.

Mr. MATHER: I have the implied consent law of California here in digest form and it states: "The implied consent law is a law which provides that if you drive an automobile on a public street you have implied that you have given your consent to a chemical test for alcohol if placed under arrest for driving while intoxicated offence. Refusal to take the test results in the loss of the driving privilege for a specified period." This is the law, whether it is a state law or a federal law.

Mr. BAZOS: No, that is not the point, sir. Is it a felony or is it a misdemeanour?

Mr. MATHER: My bill has to do with a proposed amendment to the federal Criminal Code. This is one of the few things we have in common in Canada.

Mr. BAZOS: Perhaps my lawyer friend over here can explain the distinction that I am trying to put forth between quasi criminal and felony. May I say this to you? If a man is convicted of a breach of this bill, if it is enacted, his record would be deposited with the R.C.M.P. in Ottawa; whereas if he is convicted of a provincial violation such as the Highway Traffic Act or similar legislation in other provinces, it would not be construed as a criminal record to be deposited in Ottawa.

Mr. WOOLLIAMS: Your best stand, if you had caused a disturbance under the Code and you are charged and convicted under the Code it would be in criminal records, but you could under the by-law of a city have caused a disturbance shouted and causing a disturbance is breach of the peace which is not criminal.

The VICE-CHAIRMAN: Are there any further questions?

Mr. BAZOS: May I ask this, sir. Is it your intention in propounding this bill to take care of problems on the highway, as possibly in all your sincerity you envisage, and you do not wish to make the conviction a crime, because if such is the case, I think the matter could be altered very easily by providing the fact that it is not a crime or that you would not have a criminal record in the sense that he refuses to give the test. I do not know.

My own feelings are, as I have stated here, that if I can be convinced that alcohol is a predominant factor, then I would say, let the provinces pass some form of regulatory thing because it has control of the highways.

The thing that I am wondering about is whether you would push this matter to its logical conclusion and whether this would be constitutionally sound. I am also asking you this. Have you ever stopped to think, sir, that if, for example, this was made law and one of my clients was charged with an offence, I would insist that the breathalyzer be sealed and not used for any other test and that that breathalyzer be brought to court and evidence be given and the machine be examined, tested, and the conditions under which the test was administered be duplicated to determine whether in fact the machine was accurate?

The VICE-CHAIRMAN: Are you finished your questioning, Mr. Mather?

Mr. MATHER: Yes, I am finished asking questions, but I would like to answer one or two which have just been asked of me.

Mr. WOOLLIAMS: It is twenty minutes after six o'clock and we have another meeting to go to.

Mr. MATHER: I can answer them very briefly. I can say that the witness has his contention but I would rather support that of the Canadian Bar Association, the Canadian Medical Association and the Canadian Highway Safety Council which support this type of legislation, as I have proved.

Mr. BAZOS: All I can say here is that you look at the statistics that have been submitted and draw your own conclusions.

Mr. MATHER: Will you be here and hear the Bar Association next Tuesday?

The VICE-CHAIRMAN: Gentlemen, I just want to thank Mr. Bazos for coming from Toronto to give us his opinions and ask him to excuse us for delaying his statement from this morning to this afternoon. We certainly will have a second look at all those statistics and your presentation. Thank you, Mr. Bazos.

The meeting is adjourned.

APPENDIX "7"

MEMORANDUM SUBMITTED TO THE CHAIRMAN AND MEMBERS OF THE STANDING COMMITTEE ON JUSTICE AND LEGAL AFFAIRS, HOUSE OF COMMONS, OTTAWA, CANADA THIS 27th DAY OF OCTOBER, 1966, IN RESPECT OF BILL C-87.

Anthony C. Bazos,
Barrister and Solicitor,
1030 Broadview Ave.,
Toronto 6, Ontario.

Total Number Accidents of Motor Vehicles	Criminal Charges of all Descriptions	Personal Injury	Property Damage	Criminal Charge	Charges (Criminal)		Fatalities from		Personal Injuries in	
					Impaired	Intoxicated	Impaired	Intoxicated	Impaired	Intoxicated
				Fatalities				charges		
1965.....	12,484	4,110	8,329	45	1,106	190	4	2	364	70
1964.....	12,484	3,556	8,691	55	1,100	142	2	1	283	35
1963.....	12,302	3,490	9,480	36	1,167	154	6	0	300	43
1962.....	13,006	2,987	8,497	39	1,110	101	2	0	259	21
1961.....	11,523	7,755	2,632	28	1,115	92	4	0	270	18
1960.....	10,425	2,091	6,536	37	1,067	67	3	0	231	11
1959.....	8,664									
	22,872				- NO OTHER FIGURES AVAILABLE -					

The above figures have been obtained from the records of the Metropolitan Toronto Police Department and are subject to written confirmation from the said Police Department.

In referring to the booklet of statistics published by the Ontario Department of Transport in relation to Motor Vehicle Traffic Accidents titled "Accident Facts" 1965 it is noted that "Inattentive Driving" was the most frequent improper driver action reported by the police as a cause in all accidents. (page 1).

Further in the age groups 16 to 24 years the other improper actions reported most frequently were in the following order: Speed too fast for Road and Traffic Conditions; "Driver lost Control"; "Did not have right of way"; "Did not have right of way"; "Driver lost control"; 'speed too fast for road and traffic conditions', (page 2).

In the age groups 25 to 64 years the other improper actions in order of frequency were: 'Did not have right of way'; 'Driver lost control'; 'speed too fast for road and traffic conditions' and over the improper driving action most frequently reported was: 'did not have right of way'. (page 2).

As to the known conditions of drivers involved in all accidents: 192,384, or 91.2% were 'apparently normal'; 3,832 or 1.8% were classed as 'ability impaired'; 13,334 or 6.3% as 'had been drinking'. (page 3).

More than 36.8% of the total reported accidents occurred in Urban Areas (Cities) having a population of 10,000 or over (but not including Metro-politan Toronto). Accidents in Metropolitan Toronto (with about 25% of the Ontario Population) made up 22.0% of the total, while 21.1% happened on the main provincial highways. (page 2).

In so far as fatal accidents are concerned: Driver actions reported by the police in fatal accidents shows that 'inattentive driving' is the largest contributor followed by 'speed too fast for road and traffic conditions'. (page 2).

The reported known condition of drivers involved in these accidents shows that: 1,219 or 78.3% were 'Apparently Normal'; 45 or 2.9% were classed 'ability impaired'; 266 or 17.1% had been drinking. (page 3).

It is to be noted that it cannot be argued in any way that alcohol plays in any way a major contributing factor to accidents on the highways. A perusal of the charts and increased registrations and additional miles travelled by automobiles does not show any significant increase in the ratio to warrant any expression used by certain alarmists as "earnage on our highways as a result of the drinking driver". In fact any such arguments it is submitted have no foundation in fact.

IN ALL ACCIDENTS

IN FATAL ACCIDENTS

- (1) Inattentive driving.

(2) Did not have right of way.

(3) Driver lost control.

(4) Speed too fast for road or traffic conditions.

(5) Other factors.
- (1) Inattentive driving.

(2) Speed too fast for road or traffic conditions.

(3) On wrong side of road.

(4) Driver lost control.

(5) Did not have right of way.

The above table shows the actions of drivers in all accidents and in fatal accidents which were most frequently reported by police in 1965. Concerning a comparison of the various age groups it is established that the younger drivers followed the same pattern as previous years with frequently reported action of the driver involved.

In the age group 65 years or over 'Failure to yield Right of Way', represented the improper driving action most commonly reported. (page 9).

In relation to CONDITION OF DRIVERS

CONDITION	ALL ACCIDENTS	FATAL ACCIDENTS
Apparently normal.....	192,384	1,219
Ability impaired.....	3,832	45
Had been drinking.....	13,334	266
Extreme fatigue.....	777	14
Physical defect.....	638	13
Not known.....	7,426	374
Total.....	218,391	1,931
	100.0	100.0

91.5% of the 218,391 drivers whose condition was classified by the police, were 'Apparently normal', (this includes those whose condition was 'not known'). For those involved in fatal accidents the corresponding figure was 82.5%.

228 more drivers were classed as 'ability impaired', and this is an increase of .2% and 1,685 more who 'had been drinking', an increase of .1% over the 1964 figures. (page 9).

It is submitted that the increase means nothing when one considers the increase in vehicle registrations. Further the statistics do not consider those drivers who may have been drinking with a view to committing suicide by an automobile accident to collect on insurance life policies for the beneficiaries. It is noted that those whose condition was classified as 'impaired' was made up mainly of the age group 25 to 44 years. In the case of those classified as 'had been drinking' it was the age group 20 to 44 which made up the largest share. Personal problems must also be taken into account in the driving ability it is submitted. One must bear in mind the economic conditions which would affect the accident statistics.

Concerning Driver Responsibility in accidents it would appear that the younger drivers (16-24 years) and older drivers (65 years and over) were more frequently 'at fault' than the drivers in the age groups 25 to 64 years. Those drivers in the age group 45 to 54 years showed the lowest 'at fault' rate again in 1965 with the greatest increases being shown in the age groups 16 to 19 years (25.2%) and the 20 to 24 years (11.4%) (page 12).

Fatal accidents increased over all by 9.6% from the 1964 total. Fatal accidents in Metropolitan Toronto showed a decrease of 6.5% while the larger other urban areas showed increases. An increase of 8.2% was recorded in fatal accidents in rural classifications, with those occurring on secondary roads showing the highest increase. (page 14).

One must bear in mind that in Metropolitan Toronto there have been instituted the cross-walks which could quite possibly have a bearing on the reduction of fatalities.

In relation to FATALLY INJURED: of the 1,611 persons fatally injured in motor vehicle accidents 619 (38.4%) were motor vehicle drivers; 564 (35.0%) were passengers and 387 (24.0%) were pedestrians. These three classifications accounted for 93.8% of all deaths reported in 1965.

It is suggested in considering the fatally injured figures one must bear in mind the fact that automobiles could be constructed with certain additional safety features which could well help it is submitted to reduce the fatality ratio.

It would appear that in 1965 in relation to the total number of accidents ability impaired in so far as condition of the driver totalled 1.75% and had been drinking the amount was 6.10%. In the figures for 1964 ability impaired in so far as condition of the driver totalled 1.80% and had been drinking the amount was 6.18%.

In REFERENCE TO THE 1964-5 REPORT OF THE MINISTER OF THE ONTARIO DEPARTMENT OF TRANSPORT

The Statistics reported on pages 23 to 27 of this report tell a story of continued growth in the use of highways which reflects the overall economy of this Province. The number of motor vehicles and trailers registered in 1964 increased by 4.8% over 1963 making a total in excess of 2.5 million.

One item of particular interest in the summary is the reduction in motorcycles of about 2,000 from 1954 to 1964. The smallest number of motorcycles registered since the war years was in 1962 and 1963 when about 7,000 were registered. This number increased in 1964 to ten thousand. **AND THE TREND FOR 1965 INDICATES AN INCREASE IN EXCESS OF 100 per cent.**

The variety of purposes for which passenger type vehicles are now used is reflected by the increase of 133 thousand or 739% in dual purpose vehicles. The following table dealing with the categories of passenger vehicles indicates a trend to the COMPACT CAR and a preference for the 8 cylinder motor by purchasers of regular size automobiles. (page 1).

One should consider it is submitted the deaths that occur as a result of the increase in the use of compact motor vehicles. At page 7 of the report the chart shows a sharp increase in motor vehicle registrations and a considerable drop in the fatal accidents, with a drop from the peak in so far as motor vehicle accidents. The Registrations of motor vehicles are shown at pages 23 and 24 of the Report.

At page 33 of the report there is noted that for the years 1963 and 1964 the convictions for:

1963	1964
DRIVING WHILE INTOXICATED.....	702
DRIVING ABILITY IMPAIRED.....	681
At page 42 of the Report Fatal accidents by type of collision discloses in 1963 1,222 deaths; total motor vehicle registrations 2,268,320	10,240
in 1964 1,202 deaths; total motor vehicle registrations 2,381,219.	

It is submitted therefor that "alcohol" is not a contributing factor in the increase of deaths, from motor vehicle accidents. In the event this Bill C-87 is enacted as law and is put into effect it is suggested that one should consider before this Bill is ever made into law as to who are the people or firms that have a vested interest to see that this bill becomes law:

- (a) Insurance Companies, because the Statutory Conditions provide in an automobile insurance policy that: 2(1) The insured shall not drive or operate the automobile: (a) while under the influence of intoxicating liquor or drugs to such an extent as to be for the time being incapable of the proper control of the automobile.
- (b) Police forces;
- (c) law enforcement bodies such as Crown Prosecutors or Attorneys;
- (d) groups that desire to have drinking abolished or restricted;

It is submitted that convictions are obtained in the Metropolitan Toronto area in at least 91% of all prosecutions for impaired driving. Law enforcement is not prejudiced by the present law for police departments if they wished could as in other jurisdictions take movies of an accused when he is arrested, or have a tape-recording of his voice, both of which could be introduced in evidence at trial. The law as it presently stands is doing a good job.

As a member of the Canadian Bar Association the Writer has been adamantly opposed to any change in the law making a crime what is in essence a social problem, a medical problem.

A special committee of the Canadian Bar Association was instrumental in preparing a report dated on the 19th of February, 1965. The members of this Committee were:

His Honour Judge Harold W. Pope District Judge, Moose Jaw, Saskatchewan;
 His Worship Magistrate S. Tupper Bigelow, Q.C., Toronto, Ontario.
 Walter C. Newman, Q.C., Winnipeg, Manitoba.
 A. Stewart McMorran, Q.C., City Prosecutor, Vancouver British Columbia.
 Hazen Hansard, Q.C., Montreal, Quebec.
 John T. Weir, Q.C., Toronto, Ontario.
 P. D. Isbister, Q.C., Toronto, Ontario.

With the exception of Mr. McMorran, the Writer is of the opinion that none of these persons named have been working members of the Criminal Justice Section of the Canadian Bar Association and in any event have not been members of the Ontario sub-section of the Criminal Justice Section which has been adamantly opposed to any change in the law in so far as Breathalyzers are concerned. It is my understanding that the British Columbia sub-section opposed the proposed suggested change in the law also. There was a spirited discussion in 1965 at the Annual Meeting of the Canadian Bar Association and the Report was withdrawn.

The effect of this proposed change in the law will cause a person to have a criminal record with all its ensuing consequences; it will remove from the field of criminal jurisprudence a basic principle that no man may be compelled to give evidence which will be used to convict him of a criminal offence; it will subject any person to the whim of any police officer whose nature could be at all capricious, to submit to a test; the presiding jurist will not exercise any judgement in determining guilt or innocence of an accused person charge with this type of suggested offence; guilt or innocence will be determined by a machine which is subject to variable factors; no defence counsel could honestly support such a suggested change in the law; no person that believes in the protection of civil liberties could support such a law as proposed; this proposed amendment to the law will not take into account the state of impairment of the automobile driver at the actual time of driving for tests of this nature would be performed at a time period after the lapse of at least one hour after the alleged impaired driving; each individual has a different capacity as to driving and some persons would if in fact it is submitted no person would be impaired at the figure suggested and the figure usually accepted as a rough rule of thumb in Courts of my experience is ".15". One must consider the physical characteristics of the driver, his experience and his tolerance to alcohol. It is submitted that the persons who will drive and drink will not be reduced in so far as fatality accidents are concerned. One may analogize in jurisdictions where the death penalty for murder has been abolished, this has not reduced murders. It is submitted that the proposed law will be unenforceable for in all probability the persons who will conduct the tests will be policemen who could be subject to law suits for malicious prosecutions if it should turn out that there was an error made in compelling someone to take the test. It is suggested that they would not be impartial, under the circumstances. One can envisage a person taking a breath sample in a balloon to have it tested by his own technician, and the mere thought of making it a crime to refuse to blow into a balloon, is ludicrous to say the least. The law is working in an effective manner as it now exists. There has been no case made out that alcohol is responsible for the phrase of certain alarmists, "the carnage on our highways". Deaths occur because of the increasing number of vehicles which are presently using our highways and are causing enormous problems of traffic congestion in larger metropolitan areas. Let not the age of the machine invade our courts of justice and deprive an accused person of the concept of law which has existed for many centuries that every man is innocent until he is proven guilty beyond a reasonable doubt and let us not make of our courts a forum for forcing a man to give the very evidence which will be used to convict him, against his will, and convicting him of a crime as well if he refuses to provide the evidence to convict himself. This would be contrary to all the principles of British Justice and would be contrary to the principles of jurisprudence that have grown over the years in our Canadian Courts. Let us not take the Canadian Bill of Rights and abrogate the provision therein that provides that no law of Canada shall be construed or applied as to authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards. Let us spend our time in a more constructive fashion to advance the dignity of man, to protect the rights of man, rather than make a crime something that the average citizen of this country is totally unaware of the tragic consequences that could flow if this Bill is enacted into law.

All of which is respectfully submitted,
ANTHONY C. BAZOS,
Barrister and Solicitor,
1030 Broadview Ave.,
Toronto, 6, Ontario.

**OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE**

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 14

TUESDAY, NOVEMBER 1, 1966

Respecting the subject-matter of
Bill C-87, An Act to amend the Criminal Code
(Impaired Driving)

WITNESSES:

From the Canadian Bar Association: Mr. Perrault Casgrain, Q.C., President; Mr. A. Gordon Cooper, Q.C., Dominion Vice-President; Mr. Ronald Merriam, Q.C., Secretary.

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STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (High Park)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Choquette,
Mr. Chrétien,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Laflamme,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McCleave,
Mr. McQuaid,

Mr. Nielsen,
Mr. Otto,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Trudeau,
Mr. Wahn,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 1, 1966.

(18)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Cameron (*High Park*), Choquette, Chrétien, Forest, Goyer, Guay, Honey, Latulippe, MacEwan, Mather, McCleave, Ryan, Colmie, Wahn, Woolliams (15).

In attendance: From the Canadian Bar Association: Mr. Perrault Casgrain, Q.C., President; Mr. A. Gordon Cooper, Q.C., Dominion Vice-President; Mr. Ronald Merriam, Q.C., Secretary.

On motion of Mr. McCleave, seconded by Mr. Forest,

Resolved,—That reasonable living and travelling expenses be paid to Dr. I. Rabinovitch, who will appear before the Committee Thursday, November 3, 1966, in accordance with the scale of expenses approved by Mr. Speaker.

The Chairman indicated to the Committee that the dates previously proposed for the hearings in Detroit (November 8, 9 and 10) were not suitable to the Motor Vehicle Manufacturers since their executives would be in New Mexico that week at the Stapp Safety Conference.

After discussion,

On motion of Mr. Ryan, seconded by Mr. Wahn,

Resolved,—That the Committee tour the Automobile Manufacturer's testing and research facilities and hold hearings November 29, 30 and December 1, 1966.

The Chairman introduced the officers of the Canadian Bar Association; Mr. Perrault Casgrain, Q.C., Mr. A. Gordon Cooper, Q.C., and Mr. Ronald Merriam, Q.C. Mr. Casgrain then made a statement covering the resolution and submission of the Canadian Bar Association relating to Bill C-87 (impaired driving).

The witnesses were questioned by the Committee.

On motion of Mr. Mather, seconded by Mr. Forest,

Resolved,—That the resolution and submission of the Canadian Bar Association be appended to today's proceedings (*see Appendices 8 and 9*)

The Chairman thanked the witnesses for making their presentation before the Committee.

At 1.10 p.m., the Committee adjourned until 11.00 a.m. November 3, 1966.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, November 1, 1966.

The CHAIRMAN: We have a quorum, gentlemen. The clerk has supplied me with some motions that he would like to have passed. The first is that reasonable living and travelling expenses be paid to Dr. I. M. Rabinovitch, who will appear before the committee on Thursday, November 3, in accordance with the scale of expenses approved by Mr. Speaker.

Have I a mover and a seconder for such a motion?

Mr. McCLEAVE: I move the motion.

Mr. FOREST: I second the motion.

Motion agreed to.

The CHAIRMAN: Mr. Ray has asked me to mention that the dates we proposed for the hearings on November 8, 9 and 10 are not suitable to the motor vehicle manufacturers as the executives will be in New Mexico that week at the staff safety conference. It appears that November 28, 29 and 30 would be the best alternative dates. The motion which Mr. Ray has suggested, and I think we have agreed on, is that the Committee tour the automobile manufacturing testing and research facilities and hold hearings November 28, 29 and 30. Do we have a mover and a seconder?

Mr. RYAN: I move that the Committee tour the automobile manufacturing testing and research facilities and hold meetings on November 28, 29 and 30.

Mr. WAHN: I second the motion.

Mr. RYAN: But not at their expense.

The CHAIRMAN: No, not at their expense.

Motion agreed to.

The CHAIRMAN: Now, gentlemen, I have the honour and privilege to introduce to the meeting the officials from the Canadian Bar Association: Mr. Terrault Casgrain, Q.C. President of the Canadian Bar Association, who comes from Rimouski, Quebec; Mr. A. Gordon Cooper, Q.C., Dominion Vice President. I think I heard you say you came from—?

Mr. A. GORDON COOPER, Q.C. (*Dominion Vice-President, Canadian Bar Association*): Halifax.

The CHAIRMAN: Halifax. Mr. McCleave will be right at home.

Then we have Mr. Ronald Merriam, Q.C., Secretary of the Canadian Bar Association, and I think every member who is a lawyer is well acquainted with

Mr. Merriam and the work that he does. I call upon this distinguished group to express their views, and the views of the Canadian Bar Association, with regard to Mr. Mather's bill relating to people who drive in an impaired condition. Mr. Casgrain.

Mr. PERRAULT CASGRAIN, Q.C. (*President of the Canadian Bar Association*)
Thank you, Mr. Chairman. The Canadian Bar Association is grateful to this committee for having invited them to present their views.

We have been studying this matter for quite a long time. It started with the Canadian Medical Association back in 1962. As you are aware, the Canadian Medical Association is to their profession what we, the Canadian Bar Association, are to ours. The Canadian Bar Association adopted a 1962 recommendation of a committee of the Canadian Medical Association, and it recommends legislation which will:

1. Recognize the breathalyzer test, carried out by properly trained technicians, as an accurate method of determining blood alcohol levels, and that the results of this test be admissible as legal evidence.
2. Make it unlawful to drive a motor vehicle with a blood alcohol level of more than .05 per cent, which would be 5/10,000^{ths}.
3. Make a submission to the breath test mandatory when requested by law enforcement officers.

That was the resolution of a committee of the Canadian Medical Association. Of course, this committee was not speaking for the association but it was reporting to their association.

The Canadian Medical Association got in touch with the Canadian Bar Association to find out their views on the matter. We realize that it was something which was very controversial at the time. There were very, very strong medical opinions against the test and there were very strong opinion from some doctors engaged in forensic medicine who appear before the courts and have very, very convincing ways of expressing themselves. There were also very strong opinions at that Bar by lawyers specializing in criminal law, and also by other members of the Bar who saw in that legislation an encroachment on civil liberty. On the other hand, there was carnage on the highways and there was a very strong demand by large sections of public opinion that a proper remedy should be found for a situation which some found rather horrifying.

Therefore, realizing there were contradictory points of view and it was a matter which required deep study, the Canadian Bar Association appointed a committee to consider the recommendation of the committee of the Canadian Medical Association and to carry out a very thorough inquiry, not along the line of procedure but by way of obtaining information very similar to the way in which your Committee is now proceeding. We suggest you obtain the opinions of doctors who specialise in this particular feature of their profession and then you get the opinions of lawyers, judges and the police.

This committee is composed of the following:

His Honour Judge Harold W. Pope, District Judge, Moose Jaw, Saskatchewan.

His Worship Magistrate S. Tupper Bigelow, Q.C., Toronto, Ontario.

Walter C. Newman, Q.C., Winnipeg, Manitoba.

A. Stewart McMorran, Q.C., City Prosecutor, Vancouver, British Columbia.

Hazen Hansard, Q.C., Montreal, Quebec, a former President of our Association.

John T. Weir, Q.C., Toronto, Ontario, a former President of our Association.

P. D. Isbister, Q.C., Toronto, Ontario.

That committee made a very thorough study of the matter and came up with the following recommendations. Your Committee therefore recommends legislation as follows:

1. Making it unlawful to drive a motor vehicle with a blood alcohol level to be fixed by the legislation provided—and under paragraph 1 there are five sub paragraphs. This is not the resolution which you have before you, it is a previous resolution. I wanted to show step by step how we arrived at the resolution which you now have before you. These recommendations are:
 - (a) that the level should not be less than .1 per cent or 1.0 parts per thousand of alcohol in venous blood,
 - (b) that the blood alcohol level be determined by analysis of breath only,
 - (c) that the accused is offered a sample of the material to be tested to determine the level,
 - (d) that the analysis on behalf of the Crown Prosecution is conducted by a duly qualified technician, and
 - (e) that the accused must be afforded the opportunity to cross-examine everyone who takes part in the taking of the sample and analysis of it, including the person who is responsible for the maintenance of the equipment used in the analysis.

That is the first paragraph. I will continue:

2. Making it an offence for any person to refuse without cause to give a sample of breath when required to do so by any law enforcement officer who has reasonable and probable grounds for believing that such person has committed an offence.
3. That the offences recommended above be punishable on summary conviction only and that the penalties therefor shall be as for a first offence on impaired driving with no minimum penalty but with the power to prohibit driving on the highways in Canada during any period not exceeding three years.
4. That Sections 222 and 223 of The Criminal Code be deleted and a new section enacted creating a new offence of impaired driving only.

Now, gentlemen, our association functions in the following manner. There is a meeting of the directors of the association in midwinter, and there are a great

number of directors, and that meeting also brings together a great number of lawyers from all parts of Canada. At that meeting, which was held on March 2, 1965, the matter was discussed at great length. Many members of the association expressed views on the subject which were not just an impression, but which were the result of having studied the matter quite thoroughly and some very illuminating debate took place. The majority of the directors of the association thought that the resolution which I just read to you should be substantially adopted, but making the suggested percentage of blood alcohol content a little bit lower, that is, .08 per cent, which I think is eight parts in ten thousand. They thought that 1 per cent was so much that it was really beyond reasonable measure and that a person with that percentage of blood alcohol would be so soaked in alcohol that it would not be practical.

Now you will note the Canadian Medical Association committee arrived at .05 per cent, our special committee arrived at 1 per cent and the doctors arrived at .08 per cent.

This resolution came up again at the annual meeting of the association in Toronto at the end of August or the beginning of September, 1965, and this meeting was not very well attended. It was the closing general meeting and many people had left. As a matter of fact, I believe there were fewer members at that meeting than there were at both the council and the directors meetings, which had preceded this meeting. So, it was felt that the association could not express its views and that it would be better to wait and then put a study of this situation, and the voting on it, on the agenda well in advance of the date of the next meeting so that we would be sure of an almost full attendance. This is what happened at an extremely well attended general meeting in Winnipeg where, after another debate, this resolution which is before you was approved by a substantial majority. Of course, there are two angles to this matter.

From a purely medical standpoint I cannot say whether we are right or wrong in suggesting it should be .08 per cent. I am sure you will seek information from other sources who will check us on that, but that is what we thought, according to the information which we have gathered from the medical profession, was the percentage we should recommend.

What concerned us greatly, of course, was reconciling the civil liberties and traditional rights of an accused with this legislation, and we thought by saying that this would be made compulsory—and I am speaking from the Criminal Code point of view—we would not deprive the citizen of a fundamental right. Whether a man is asked to breathe into a policeman's face when he is arrested or into a machine, which will be more accurate than the policeman's impression to determine whether he has alcohol in his system or not we feel does not really create such a tremendous attempt to waive the rights of a citizen that it should not be adopted. The resolution embodies many safeguards to protect civil liberties and the rights of the person accused. One of those safeguards is that the accused must be afforded the opportunity to cross-examine everyone who takes part in the taking of the sample and analysis of it, including the person who is responsible for the maintenance of the equipment used in the analysis. Well, that differs greatly from the customs and excise law that says, well, here is a sample for the laboratory, there is the evidence. It is evidence until it is contradicted.

and then full opportunity must be given to cross-examine everyone who took part in the analysis. The resolution states very clearly that the evidence resulting from the breathalyzer test is *prima facie* evidence only. It can be contradicted the same as any other evidence.

Then the accused is offered a sample of the material to be tested to determine the level. Well, you may say that he can go to this doctor right after a sample has been taken and have his blood analysed or his urine analysed. Of course he is free to do that and that would be one way of contradicting the findings of the breathalyzer. Also, being supplied with the sample, he is at liberty to have the same analysis performed by a chemist or a competent person of his choice in order to contradict the evidence which might be taken by some office of the Department of the Attorney General.

It has been recommended that an offence is created if the person refuses to give a sample of his breath to an officer who has reasonable and proper grounds to believe that such person has committed an offense. It is also an offence to drive a car with a blood alcohol content of a higher percentage than that determined by law, which is .08 per cent, or whatever percentage may be applied under the law.

Now, we do not recommend there be a minimum sentence. A minimum sentence is within the discretion of the court for the first offence but we recommend there be power to prohibit driving for a period not exceeding three years if the man is found guilty of having a higher percentage of blood alcohol than .08 per cent. I refer only to the percentage, I do not mean refusing to give the test. Then, as a consequence of those changes, that sections 222 and 223 of The Criminal Code be deleted. There are presently two offenses under those two sections: one is drunken driving and the other is impaired driving. Under this legislation the offence of drunken driving would disappear. It is always very difficult to make a distinction between drunken driving and impaired driving, but here there will be only the offense of impaired driving.

That is the resolution, gentlemen, and we are ready to answer any questions you may wish to ask.

The CHAIRMAN: Well, thank you very much indeed, Mr. Casgrain. For the benefit of the members who came in before I completed my introduction, the gentleman who just spoke is Mr. Perrault Casgrain, the President of the Canadian Bar Association. The gentleman to his right is Mr. Cooper from Halifax, the Vice President, and there is Mr. Merriam, the Secretary.

Do you want to say anything at this stage, Mr. Cooper or Mr. Merriam?

Mr. COOPER: Mr. Chairman, I would just like to emphasize what the president of the association has said; that this proposed resolution would result in the creation of a new offense, that is, the offense of making unlawful the driving of a motor vehicle by a person with a blood alcohol level to be fixed by the legislation, and then the resolution sets out the provisos. That is a new offence, something which at present it not in the Criminal Code at all. The other part of the resolution,—or what I think of as the other part—as contained in paragraph 5 of the resolution, deals with offenses already in the Criminal Code, that is the two offenses of impaired driving and drunken driving. Under the

proposal contained in paragraph 5 those two offenses would be deleted from the Criminal Code and a new section would be enacted which creates the new offence of impaired driving only.

I think it is very important, if I may say so, Mr. Chairman, to make abundantly clear that the resolution contemplates a new offence in the words of paragraph one of these resolutions and, of course, carrying on to paragraph two. During the debates on this matter, and they were very extensive debates which were participated in, if I may say so, by lawyers knowledgeable in the field of criminal law and representing many parts of Canada, an analogy was drawn between this new offence and the present offence of exceeding the speed limit. As we all know, if we merely exceed the speed limit on a highway and, we are caught by the police, we are guilty of an offence. One might be driving quite safely and within the bounds of caution, and everything else, but nevertheless one is guilty of an offence if one exceeds the speed limit. Now, this new offence can be likened to that. This new offence relates to the blood alcohol level and once that level is exceeded the offence has been committed.

Thank you, Mr. Chairman, I just wanted to add those few words at this point.

Mr. CHAIRMAN: Thank you very much indeed, Mr. Cooper.

Now, gentlemen, the meeting is open for questions. Mr. McCleave and then Mr. Tolmie.

Mr. MCCLEAVE: Mr. Chairman, has the Bar studied Mr. Mather's bill and does this carry out to perfection the purport of the resolutions of the Canadian Bar Association.

The CHAIRMAN: Mr. Merriam can answer this.

Mr. MERRIAM: Mr. Chairman and Mr. McCleave, I am quite certain Mr. Mather's bill is directed toward the same ultimate goal as our resolution. I think there is one distinction that possibly Mr. Cooper drew here a moment ago that is very important which may not have found its way entirely into Mr. Mather's bill, in the sense that this resolution is not directed to impairment as we now know it and as it has been traditionally interpreted over the years, it is directed to a completely new concept of being unfit to drive a car or that you should not be in charge of a motor vehicle if you have an alcohol content of a certain level. Now, Mr. Mather's bill, as I read it, continues the concept of impaired driving and it would seem to me that the court would still have to interpret that word "impaired" in the first paragraph of the bill, and this is one of the things we are trying to get away from, the concept of "impairment."

Mr. MCCLEAVE: The second question I have is that Mr. Mather's bill provides for a police officer who has reasonable and probable grounds, and so on, but should we not have a provision in there that the police officer either gives the standard warning to the driver, or says, "I have reasonable and probable grounds to think that you should have this test because your car went over the white line", or state specifically what the police officer is concerned about.

Do you gentlemen have any comment on that? That is, either a warning in the standard form that we have now or a statement by the policeman, not in court but at the exact time, as to why he is taking this step.

Mr. COOPER: Mr. Chairman and Mr. McCleave, I think it is fair to say that we thought we had covered that point by paragraph 2 of the resolution, "Making it an offence for any person to refuse without cause to give a sample of breath when required to do so by any law enforcement officer who has reasonable and probable grounds for believing that such person has committed an offence." I suggest that if a law enforcement officer stops somebody, I do not think that one should require a provision in the bill as to warning if the person whom he stops considers that he has been driving in a proper manner and has not had enough to drink to get to the level which might be prescribed by the legislation and refuses to give a sample of breath. Then, of course, in any subsequent proceedings the law enforcement officer, as I see it, would have to establish reasonable and probable grounds for believing that such person has committed an offence.

Mr. McCLEAVE: Now, my third point. I do not know if you gentlemen were personally involved in the discussions with your counterparts from the Canadian Medical Association on this matter, but am I correct in my mathematics to anybody's recollection that the acceptable alcoholic level in the blood of a 200 pound man, to bring it home, is about two and one half ounces—which is one decent drink—and beyond that you are in trouble.

Mr. COOPER: Mr. Chairman, Mr. Merriam has just made a comment to me and I think his comment is correct; that is not our information. As a matter of fact, gentlemen, and I do not want to interject any personal note in this discussion at all because I am not here in any other capacity than as an officer of the Canadian Bar Association but I may say, although my weight is not 200 pounds, that I have taken this breathalyzer test on three or four occasions and I can assure Mr. McCleave, who probably knows me well enough to know it anyway, that I had more than two and one half ounces when I took the test and I am very proud to say that I passed the test, although I do not think I would have wanted to take my car out on the road.

Mr. CHAIRMAN: Mr. Tolmie, Mr. Woolliams, Mr. Mather, Mr. Forest and then Mr. Honey.

Mr. TOLMIE: Mr. Chairman, in our particular area if the police have a reasonable and proper cause to suspect that someone has been drinking and driving they will take him down to the police station and give him certain tests, such as walking a line, picking up a pencil or taking something out of his wallet. If he does not pass these tests, and also in the opinion of the policeman involved as to his general condition, he is charged. I would think perhaps between 90 and 95 per cent of the people who are charged in such a manner are convicted. Now, if we take the same situation and take the man down to the police station and give him the breathalyzer test, no doubt he would be over the .1 per cent as suggested. What I am trying to establish in my own mind is this: do I understand that the breathalyzer test would act as a deterrent? The whole purpose of this legislation is to eliminate accidents and death and destruction on the highways by people who are driving and drinking. Now, assume for a moment that I am going to drink. Am I going to be any more deterred from drinking and driving because I have to go down to the police station to take a breathalyzer test than I would be deterred by the fact I know that if I am driving in an erratic manner the police are going to apprehend me and take me down and make me undergo these examinations, with perhaps the same result. I would like to hear some

comment on the basic premise of this whole breathalyzer test; that it is a real deterrent that will prevent people from drinking and driving, and I have not heard a clear explanation of this point. I would like to have your comments, gentlemen.

Mr. CASGRAIN: First of all, let me thank you for having brought up the point of deterrent, which is something I should have covered in my opening remarks. The purpose of this amendment, in the view of the Canadian Bar Association, is to make this a deterrent in the same way as the speed limit is a deterrent. In other words, as Mr. Cooper said, you may safely drive a car at 100 miles per hour if you have all the conditions required for that; your automobile mechanically in order, nobody on the road, straight road, and all that, and yet violate the speed laws which forbid you to drive beyond 60 or 70 miles an hour. Now, the effect of this deterrent is that if a man feels that he can drive at 100 miles an hour on a nice road, when he gets to the end of that nice road he is still driving too fast and if he had been afraid of being fined for driving over the speed limit set by provincial statute, then he will arrive at the more dangerous part of the road driving safely, which perhaps he would not do otherwise. It is the same thing where a man is at a cocktail party or spending an evening with friends; he has to worry about driving back home. He must watch the number of his drinks. Well, that is all right, he may stand his drinks well—and, of course, I know nothing personally about this, as none of you do—but I have been told that some people after a few drinks imagine that they are sober and the more they drink the soberer they feel! So, the deterrent would be that the man who expects to be driving his car afterwards would be deterred from having quite as many drinks as he might otherwise have because he thinks he would look very foolish if he has to be faced with and meet the breathalyzer test, although he has committed not crime, just an offense.

Mr. MATHER: Mr. Chairman, I would like to make a comment on this point of deterrent. We had evidence previously from Dr. Ward Smith, of the Department of the Attorney General in which he pointed out that the breathalyzer test has been in operation in Ontario for ten years on a voluntary basis. During that time there have been the following statistical result, respecting people who would take the test and who would not take the test. When they started the breathalyzer test in Ontario only 6 per cent of the people checked refused to take the test when asked to do so. In the following nine years the percentage of people who were asked to take the test but declined had risen to 26 per cent, and the contention of the law officers concerned is that this level of change represents sophisticated drinking drivers, who are the hard core of drinking drivers and who know they do not need to take the test so that they get by with the present law, which does not really deter them to the extent that they know they do not have to take the test. The contention is, I think, that if there was a mandatory test this would be eliminated.

Mr. TOLMIE: Yes, this is the point I was driving at because, taking myself for example, I might feel that I can go to a cocktail party and have a number of drinks and if I am apprehended I might feel I have such control over my faculties that I could perhaps delude a policeman and would not be apprehended. But if I knew for some reason, or perhaps there was an accident, I was going to be caught by the police, and regardless of my outward appearance I would have

to take a test, then, looking at it from my own personal standpoint, I might be a little more careful about whether I would drive or not. This is the point I wanted to establish in my own mind. That is all.

Mr. COOPER: Mr. Chairman, I might also add that the conclusion of the report of the special committee of the British Medical Association held in London in 1960 contains this paragraph:

"The Committee believes that a substantial reduction in the number of accidents caused by alcohol has been achieved where it has been made an offence to drive a motor vehicle when the concentration of alcohol in the tissues is in excess of a certain level."

I think that is an authoritative statement which leads to the conclusion that legislation of the type proposed here does act as a deterrent. I also believe, although I cannot document this at the moment, that experience in countries such as Sweden, where such legislation is in effect, is that the legislation has acted as a deterrent. Some interesting observations were made during the debate on this matter before the council of our association in another case, that there are guides which one can obtain even today which you can carry in your pocket which indicate within certain reasonable limits whether you are going to be able to pass a test such as is proposed here or not. The time may come when we will all have a handy guide in our pockets at cocktail parties and be able to tell pretty well what is going to happen to us if we go out on the road, having had the number of drinks we have had, if we are apprehended by a police officer. This is a real possibility. This is another aspect of the matter which bears, I think, on the deterrent question which has so properly been raised by a member of the committee who spoke to it this morning.

The CHAIRMAN: Mr. Tolmie.

Mr. TOLMIE: The host at issue; these indicators do all the guests depart.

Mr. AIKEN: Mr. Chairman, on this point, I believe it was Abraham Lincoln who said liquor has no defense and he pretty well indicated that once he took one drink a man was off his normal track of thinking, and so on, and that he did not know how far he was really going to go. Now this is not true in every case but I suppose it does happen.

My point is that I suspect the main deterrent might be that he is probably not going to drink at all some evening because of the fact that he may have to face a breathalyzer test, and I think it would be primarily in that area where the deterrent comes in.

Mr. CASGRAIN: Mr. Chairman, here are the words used by the report of the special committee of the British Medical Association:

The Committee believes that the substantial reduction in the number of accidents caused by alcohol has been achieved where it has been made an offence to drive a motor vehicle when the concentration of alcohol in the tissues is in excess of a certain level.

Mr. TOLMIE: They do not state the level.

Mr. CASGRAIN: No. Well, that is another matter.

Mr. WOOLLIAMS: Before I ask any questions I join with the other members of the committee in welcoming the members of the Canadian Bar Association, Mr. Casgrain, Mr. Cooper and Mr. Merriam. I know they have left their busy profession as members of the Canadian Bar. I know they have made a good contribution in this matter because it has been under study by the Canadian Bar Association for some time.

My first question is this, does the committee anticipate retaining the old charges, the impaired driving charges, in spite of the additional offence that you have added in your recommendation?

Mr. CASGRAIN: Yes, sections 222 and 223 would be replaced by one section, which would be on impaired driving only.

Mr. WOOLLIAMS: I take it, then, that a person who refuses to take the breathalyzer test could be found guilty of an offence and at the same time, by using other evidence, could be found guilty of impaired driving?

Mr. CASGRAIN: Yes.

Mr. WOOLLIAMS: There is one matter which bothers me, and that is leaving it to the discretion of a police officer who has reasonable and probable grounds for believing a person has committed an offence. This is giving quite a bit of scope to police officers and I am sure the committee considered that when they made the recommendation. I suppose a police officer could always say, when he was giving evidence on the witness stand and in the event someone had refused to take this test, that he had reasonable and probable grounds to ask for it, and he can develop certain facts which would quickly lead a magistrate or a judge to come to the conclusion he did have reasonable and probable grounds. We know it is very difficult in the line of cases where you have to prove there was not reasonable and probable grounds to do this. Once a police officer has asked you to take the test and you refuse, it would be very difficult to conduct a proper defence so that a person could be acquitted.

Mr. CASGRAIN: Well, my answer to this would be, of course, that the police officer would have to satisfy the court that he had reasonable grounds; you could not satisfy the court merely by saying so, the court would have to have proper evidence and the laws of evidence are such that the benefit of the doubt is always granted to the accused.

Secondly, even then he has no reason at all to fear the test. He is perfectly sober; why should he refuse to take it?

Now, in these remarks I have made I have been speaking in my personal capacity and not as a lawyer.

Mr. WOOLLIAMS: Has the committee satisfied itself from scientific evidence or other material that has come before it that the breathalyzer test is an accurate test? In other words, when you use the term "prima facie evidence" in a practical approach in law, it refers to prima facie evidence of the sort that once the test shows that a man had a certain alcoholic content in his blood which was determined by a machine then it is very difficult to upset that. It is like radar on a highway; once the machine indicates that Mr. A has a point so and so alcohol in his blood, from the practical approach he has

had it, because it would be very, very, difficult to defend yourself against that type of evidence. I have not studied this matter, I have read the odd article on it, but there is some question about it. Have they considered that a blood test might be more accurate?

Mr. CASGRAIN: They considered the blood test and the urine test and they reached the conclusion that the breathalyzer test was the easier one to take, the one that was less annoying for the person who was subjected to it, and the committee certainly did satisfy itself that those breathalyzer machines are accurate if the person who makes the test on the machine and reads the machine knows his business.

Mr. WOOLLIAMS: One further question, Mr. Casgrain. There was a suggestion—and I say this with the greatest of respect to you and I know you have thought this through—that once a person is arrested on one of these charges, if he is not satisfied with the breathalyzer test and says: "I want a blood test," and these other tests which he may consider more accurate, it is very difficult to get that test. In my experience, and I am sure it is the experience of many lawyers, once a person has been incarcerated on one of these charges it is difficult to get a doctor, difficult to get out, difficult to get bail, difficult to get a blood test, so that from the practical approach I doubt whether any accused person would be able to get a blood test or urine test or any other test that might in his opinion satisfy him that the breathalyzer test had not been accurate as far as he was concerned.

Mr. CASGRAIN: You might be right at that, but if the law is followed and if he is given the opportunity which a man must be given after he is arrested, he will be able to have his blood test because that is a measure that is used by the police.

Mr. WOOLLIAMS: Well, I appreciate that, and I say this with the greatest respect, but you know and I know in these big cities like Toronto, Montreal, Vancouver and even Calgary or Winnipeg where they have so many accused persons who are arrested at night—certainly this was my experience when I was a young practitioner—it is very difficult for an accused person to get that kind of service out of the police. The Bill of Rights is a wonderful piece of philosophy, but when you get down to one of those cells it seems to disappear very quickly under the influence of police officers.

Mr. CASGRAIN: Incidentally, I may say that the breathalyzer test can be of actual aid or help to an accused person because it would show at once that he did not have the blood alcohol content required to be in a state of intoxication and he would be released at once. In some cases it might be very helpful because if a person is sick or has been in an accident and they appear groggy, if they have the great misfortune to have had one glass of beer or one glass of scotch beforehand, when the policeman discovers their eyes are bloodshot or they have difficulty in speaking, difficulty in walking, although the person may be perfectly sober, the policeman may think otherwise, and in this way the breathalyzer test would be a great help to those people.

Mr. WOOLLIAMS: Well, Mr. Chairman, I want to thank both the president and the vice president.

The CHAIRMAN: Mr. Mather, Mr. Forest, Mr. Honey.

Mr. WAHN: Paragraph three of the resolution reads: "The person whose conduct is being investigated shall be advised that at his request he is entitled to be given a sealed sample of his own blood or his own urine at the time any other test is conducted". If this were made part of the legislation and the police refused to do it this would invalidate the breathalyzer test, would it not?

Mr. CASGRAIN: It would be a double check on the breathalyzer test.

Mr. WAHN: But am I to understand, from what Mr. Woolliams said, that this protection, if it were written into the legislation, would not be effective in practice?

Mr. CASGRAIN: Well we asked that it be written into the legislation.

Mr. WAHN: Would this not overcome Mr. Woolliams's objection?

Mr. CASGRAIN: From the standpoint of writing the law it would, but it remains to be seen whether it would in fact.

Mr. WOOLLIAMS: Just speaking to that, Mr. Chairman, I agree with Mr. Casgrain in that regard. The trouble is that in my experience, and in the experience of a lot of lawyers who have done some criminal work, police work on the whole before a magistrate, and particularly when they call them police magistrate and judges—they are pretty jealous of each other at times—is carried on in such a way that when an accused person comes forward and says, "Well, I did ask for a blood test and I asked for these other tests", the police can easily brush this aside—I know that we have the laws of perjury but I am speaking in a practical sense—and say, "Well, you never asked for it", and that rather negatives that suggestion. The Bill of Rights decrees that you are entitled to counsel and you are entitled to this and that. Many lawyers who are doing this work know that if four or five hours afterwards somebody is permitted to call a lawyer and then this is brought to the attention of the magistrate or the judge, nothing happens. What can you do? Suppose the police do refuse an accused person a lawyer or this kind of protection, what is the import of the law in respect to protection in that regard? The magistrate may just shrug his shoulders, "So what?" This is one of the great problems which we have when we talk about civil rights. From a philosophical point of view it sounds beautiful but in practice where they are very busy in these large cities—and I have some knowledge of that—I do not think the accused person always gets the protection he is entitled to under the law.

(Translation)

Mr. CHOQUETTE: To follow along the lines of Mr. Woolliams—Once I had a bill standing in my name, but, as in the case of a lot of bills, nothing came of it. However, be that as it may, it should become an offence for every police officer to refuse to conform to the provisions of the Act. I think if we were to adopt the resolution as submitted by the Canadian Bar Association, it would be a good thing at the same time to move that it become an offence for a policeman to refuse that the accused have immediate communication with his lawyer. It is a fact that the accused is often deprived of that right, a right which is supposed to be guaranteed by a Bill of Rights.

Mr. CASGRAIN: I am very much impressed both by what you have said and by what was said by the honourable gentleman who spoke before you. But we, I

the Canadian Bar Association, did all that it was possible for us to do within our frame of reference, that is within the Criminal Code. We have put in here safeguards for

(English)

The person whose conduct is being investigated shall be advised that at his request he is entitled to be given a sealed sample of his own blood or his own urine at the time any other test is conducted.

(Translation)

This means obviously that not only is the accused entitled to ask for it, but that he must also be informed of that right of his. In this particular section of the Criminal Code, according to my modest opinion, we can hardly go further. What you have suggested is one of the great problems in respect of human rights, if you prefer that expression to that of civil rights. You can speak of the rights of man, of course, like this other gentleman. In any event, we should deal with the matter through more general legislation similar to this. I could, of course, refer to the possibility both of you have referred to. That is a point, of course, but there are other possibilities. Decent people are arrested for other offences than that.

Mr. GUAY: A supplementary question. Would the blood test have the same value as the other.

Mr. CASGRAIN: Obviously, the breathalyzer test makes nothing but a prima facie case. It can be contradicted.

Mr. GUAY: Yes, through a blood test but there will be a time lag. Take the case of the very remote area where we have no doctor, no nurses, nobody who can have this breathalyzer test administered. If two hours elapse between the two—

Mr. CASGRAIN: It should be simultaneous.

Mr. GUAY: But in some cases it would be impossible.

Mr. CASGRAIN: But in those cases they probably will not have any breathalyzer.

Mr. GUAY: Yes, but the police officer can find a breathalyzer more easily than he can find a doctor where you have no doctors. In other words, the person who is arrested, the accused, would not be provided with the same means of defending himself. The Crown will have the advantage. I made a remark on this in the House of Commons when we were dealing with the defence open to the accused in the case of the death penalty. In other words, we are not here put on an equal footing. If there are two hours or two hours and a half between the breathalyzer test and the blood test.

Mr. CASGRAIN: In a remote area, the breathalyzer will not exist. It will probably be used in large centres, but in other places I do not think we will have sufficient equipment to carry out all these tests, laboratory tests or others. But here is no perfect legislation.

Mr. GUAY: But what about all the other types of evidence? Are they retained?

Mr. CASGRAIN: All of them.

Mr. GUAY: Nothing is being removed?

Mr. CASGRAIN: Yes, they are all being retained. We are not dealing only with laboratory and medical tests. All other means of defence will be retained.

(English)

Mr. MATHER: Mr. Chairman, as the sponsor of Bill No. C-87, which I think is exactly the same as the resolution which the Canadian Bar Association is aiming at, I am naturally very pleased with the testimony of these gentlemen and appreciate the trouble they have taken to come here today. Frankly, my bill was drafted on the basis of the 1964 recommendations of the directors of the Canadian Bar Association and there is very little, if any, difference between the objectives or the details of your resolution and the bill. For example, I think we both aim at making the breathalyzer test mandatory, we would both declare a .08 per cent blood alcohol level as the standard, we would both amend the existing legislation by changing clauses 222 and 223 and, finally, making impaired driving an offence by itself.

I want to ask one question which may result in an answer to questions raised earlier as to the degree of corrections or accuracy or the faith to be put into the breathalyzer test. I do not know if the committee from the Canadian Bar Association is familiar with this, but the committee of the British Medical Association recently declared that the taking of evidence by police in cases of suspected impaired driving, that is, the man breathes into a policeman's face, possibly the policeman asks the man to walk, this sort of thing, but they say this is not good enough. It is much safer and more accurate if you have an impartial piece of equipment, such as a breathalyzer, do the actual testing and that in several cases, I think about 10 per cent of the cases where this is done, the person tested is found not to have this blood alcohol content. I would ask the representatives of the Canadian Bar Association if they would agree that an impartial machine is, after all, probably a more scientific basis for testing alleged impairment than other methods previously used.

Mr. CASGRAIN: There is not the slightest doubt as to that, but the Canadian Bar Association feels that to protect civil liberties and prevent—in as much as the law can—depriving anyone of his rights or expose him to being unjustly sentenced, that we have that proof in that part of your bill which says that the level of .08 per cent is conclusive evidence that the ability of the person to drive is impaired and this creates a separate offence, but would it be conclusive evidence of impaired driving?

Mr. MATHER: You agree, as I do, that there should be safeguards for the person being questioned, such as set out in clause (4) of the bill, "shall be conducted by a duly qualified technician" and clause (5), "The accused must be afforded the opportunity to cross-examine" the people taking it. I think we are on exactly the same grounds there. In your submission you also make it an offence for a person to refuse to take a test and he will face a charge, there.

Mr. CASGRAIN: He will face a charge but with no minimum penalty, so that if he has just committed a technical offense the judge could let him go with almost a reprimand.

Mr. MATHER: I am very pleased with the recommendations of the Canadian Bar Association and, of course, my whole intent is to get—some differ on whether it is .08 per cent, some say 1. per cent would be safer—some definition of “alcohol content” and some mandatory legislation to safeguard both the driver and the public in these cases.

Mr. COOPER: Mr. Chairman, if I may just make a comment, I believe that .08 per cent or .8 parts per thousand of alcohol in venous blood is now accepted by the British Medical Association, and it has also been accepted by the Canadian Medical Association as the proper level.

Mr. MATHER: It is, that is true. Some people who testified before our committee earlier said they might feel a little happier about this proposed legislation if the blood level content was just a little bit higher than .08 per cent. I think the American Medical Association also favoured .08 per cent.

(Translation)

Mr. FOREST: Mr. Casgrain, you mentioned in your presentation that the report prepared by the committee with Mr. Isbister and which had been substantially adopted by the Canadian Bar Association had not originally been adopted by the Canadian Bar Association meeting in 1965. Did anybody at the time say that this was an invasion of private rights, and so on? Is there any report on that particular aspect of the matter?

The matter, I believe, was set back until later, but the more steady result of the matter, was it—I was not at the meeting but—

Mr. CASGRAIN: There was some discussion among sections, but finally in the 1966 convention, there was general agreement on the matter.

Mr. FOREST: There was no contrary (?) report then.

Mr. CASGRAIN: What happened was that we had the impression that there was some urgency in the matter. We felt that the government wanted an opinion earlier. We had therefore submitted to the Minister of Justice, I believe, our resolution, that is the resolution adopted by a committee of the directors of the Association. There had been a very long discussion about that at our mid-winter meeting in 1965. It was decided at that time that the matter would be resubmitted in its entirety to the Association's Second General Meeting. It had been decided, too, that we would send to all members of the Association, to every one of the 10,000 members of our Association, that we would send to them by mail the text of the resolution which was discussed in Toronto and which is the one you now have before you. In other words, you can be assured, as you say in English, that we are now speaking with one voice.

Mr. FOREST: But even provincial sections, the Quebec section, the Montreal section, received a report from Dr. Roussel and adopted a similar resolution.

Mr. CASGRAIN: I believe so.

Mr. FOREST: The provincial sections were in agreement with the national Association.

Mr. CASGRAIN: Finally they got around to agreeing. The agreement was actually reached in Winnipeg. There is no doubt whatever on the matter.

(English)

The CHAIRMAN: Mr. Honey.

Mr. HONEY: Thank you, Mr. Chairman. There are two or three matters that I would like to refer to briefly. I am wondering, Mr. President, in reference to the concern of the members of the Canadian Bar Association about civil rights, whether there was any discussion on the theory of implied consent that I think has been implemented by some of the provincial jurisdictions. In other words, there is an implication that when you apply for an operator's licence that you have consented to a blood test or a breathalyzer test. I appreciate that this is something within provincial jurisdiction and really probably does not concern us here, but was this considered?

Mr. CASGRAIN: It was not gone into at any depth, but my personal feeling is that it is somewhere in the grey area where you do not know exactly whether it is federal or provincial jurisdiction.

Mr. HONEY: If parliament enacted legislation along the lines of your resolution you would have no concern about the right of parliament to impose the obligation of taking a breathalyzer test?

Mr. CASGRAIN: On this point, sir, I cannot speak for the association because it is a constitutional issue which was not raised during our debates because everyone was so interested in the substance of what we wanted that the means were not discussed as much as was the jurisdiction. But I repeat that it may be in that grey area where you do not know exactly whether it is provincial or federal jurisdiction. I will compare that to the offence which is now in the Criminal Code of drunken driving or impaired driving, which in itself is not an offence. Willful dangerous driving is a criminal offence in itself, but impaired driving is not a criminal offence in itself, it is created by statute. It does not derive from the philosophy of law, it derives from the will of parliament, and yet this has been tested in the courts and has been found to be within the ambit of the legislative power of parliament. I do not see much difference between telling a man, "You must not drive after you have been drinking to the point of being drunk," or telling him, "You must not drive after having taken so much liquor". That is my answer.

Mr. HONEY: Mr. Chairman, I also want to make this comment with reference to section 2(a) of the resolution. I am wondering if you should not qualify or more particularly describe the offence referred to in the last part of that section, "by any law enforcement officer who has reasonable and probable grounds for believing that such person has committed an offence". Now, Mr. President, are you referring to a traffic or driving offence?

Mr. CASGRAIN: I speak for myself, but as we are dealing with the Criminal Code I would imagine—although I am not sure—it would be an offence under the Criminal Code.

Mr. HONEY: Let us assume I am driving normally in a proper fashion down the road, having had enough drinks to raise my alcohol content to .09 per cent and suppose a police officer stops me because of some whim. He just decides he wants to stop me. Would the Canadian Bar Association contemplate that if he smelled alcohol on my breath he would then be entitled to require me to take a breathalyzer test? This is what concerns me about the wording of this section.

Mr. CASGRAIN: It would be an offence to have a too high content of alcohol in the blood and the officer could reasonably suspect that such an offence exists.

Mr. HONEY: I agree. My purpose in raising it is only for clarification. In other words, when you use the word "offence" there, I take it you are including the offence set out in section 2 (a)?

Mr. CASGRAIN: That would be my personal interpretation.

Mr. COOPER: Mr. Chairman, I think I can safely say that the intent of the proposed legislation would be such as to permit the police officer, having stopped the car and smelled alcohol, to demand that the driver of the car undertake a test. I would think that situation would come within section 2 (a). I am not now attempting to place an interpretation on section 2 (a) officially for the association, but I believe that would be the intent of section 2 (a).

Mr. CASGRAIN: Moreover, if the police officer smelled alcohol on his breath he might suspect him of impaired driving, which is another offence which would still be in the Criminal Code.

Mr. HONEY: Under those circumstances he probably would not be able to convict him of impaired driving because my question was premised on the basis that there was nothing wrong with the manner in which I drove. Probably the only offence which could be included in your term "offence" would be the suspicion of the officer that I had committed the offence of having too much alcohol in my blood.

Mr. CASGRAIN: Or of impaired driving as well.

Mr. HONEY: My question was on the premise that I was driving properly. This is the only thing that bothers me, whether or not you feel in those circumstances, where I was driving properly and on some whim of the officer he stopped me and smelled alcohol on my breath, he would then have reasonable and probable grounds for requiring me to take a breathalyzer test.

Mr. MATHER: That would be dangerous.

Mr. HONEY: But you feel this would be included in the resolution?

Mr. CASGRAIN: That is a personal opinion. That is Mr. Cooper's opinion.

Mr. HONEY: The only other thing, Mr. Chairman, with reference to the new offence of impaired driving that it is suggested be created is that this would not be dependant upon .08 per cent alcohol content?

Mr. CASGRAIN: Not at all.

Mr. HONEY: Thank you.

The CHAIRMAN: Mr. MacEwan, Mr. Guay and then Mr. Ryan.

Mr. MACEWAN: Following the question of Mr. Guay and perhaps on a more provincial basis, I would like to ask Mr. Cooper regarding the breathalyzer equipment in our own province, for instance; where you envisage this equipment could be located, who would provide it, and so on. I wonder if he has any ideas.

Mr. COOPER: No, Mr. Chairman, I have no definite ideas on that point. Actually, if this legislation is going to be implemented, much will depend on the proper location of the breathalyzers and on duly qualified technical personnel to

operate those machines. I may say that at least some months ago—I am speaking parochially now—in Nova Scotia we did not have qualified technicians. Dr. Ward Smith of Toronto came down to Nova Scotia when we had a panel discussion on this subject, and I think that the committee could best direct a question such as Mr. MacEwan has raised to Dr. Ward Smith, who has had such a tremendous amount of experience in Ontario on the operation of breathalizers, and I understand that Dr. Ward Smith either has or will be appearing before the committee. I do not want to evade the question in any way but at the same time I must at the moment say that in Nova Scotia we would not have breathalizers located at strategic points, we would not have the machinery necessary to enable the legislation to have full effect. I do not think that it would be too difficult to provide that machinery. I may be anticipating to some extent what Dr. Ward Smith may say, but from my conversations with him I do not think there would be any great difficulty in providing the machines and providing the properly qualified technicians to run those machines.

Mr. MACEWAN: As far as the accused is concerned, what about the possibility of rebutting this prima facie case by way of blood or urine tests? Do you think, Mr. Chairman and Mr. Cooper, that along with breathalizers such other equipment to assist in this way could be provided as well?

Mr. COOPER: I would think so, Mr. Chairman.

Mr. MACEWAN: One more question, Mr. Chairman, directed at Mr. Merriam or I can ask the three gentlemen if they read the evidence which was given at our last meeting by Mr. Bazos, who quoted scripture and verse many of the statistics put out by the Department of Transport in the province of Ontario which he submitted pointed to the fact—I will not go through it, I do not have a copy of the evidence here—that in a small percentage of the accidents the use of alcohol was really the effective cause of the accident. Have you any comments to make on that or would you like to read the evidence?

Mr. CASGRAIN: Mr. Bazos very strongly expressed his views at the general meeting of the association, where the resolution which was submitted to you was nevertheless carried.

Mr. MACEWAN: I see. Thank you, Mr. Chairman.

(Translation)

Mr. GUAY: Whoever refuses without any valid reason, what are the reasons which would be judged valid in the case of refusal, whoever without any reasonable, what are these valid reasons?

Mr. CASGRAIN: One valid reason is that being perfectly sober, he is guilty of no infraction. He could make that answer to any policeman who puts a silly request to him. This would be an extreme case, but it would certainly be a valid reason.

Mr. GUAY: In other words, anybody who has a little bit of alcohol on his breath has to submit to the test?

Mr. CASGRAIN: A little alcohol?

Mr. GUAY: Yes. Well, what is the principle?

Mr. CASGRAIN: The principle is that if he has had only one glass of scotch and that he was driving at a perfectly safe rate of speed nothing justifies his submitting to the test. He could of course submit to the test for practical reasons.

Mr. CHOQUETTE: But if he refuses he is arrested immediately.

Mr. CASGRAIN: Yes.

Mr. CHOQUETTE: Whatever the valid reasons are?

Mr. CASGRAIN: Some people like to fight for liberty on principle. He can always submit to arrest.

Mr. GUAY: If there was a refusal, Mr. Casgrain, can he be accused of the two infractions, a) of refusing the test and, b) of impaired driving. Can the two infractions take place at the same time?

Mr. CASGRAIN: How can you establish the alcohol percentage without a blood test or urine test?

Mr. GUAY: I am speaking of the means which exist at the present time.

Mr. CASGRAIN: Yes, he could be accused of impaired driving, *i.e.* of having driven his car while in an impaired condition. He could be proceeded against on those grounds.

Mr. GUAY: You say that the same type of evidence can be brought in, in future, the law of evidence will not be changed?

Mr. CASGRAIN: It will be retained not only in favour of the accused but also for the benefit of the Crown.

Mr. GUAY: You say that his driving license may be withdrawn from him for a period in the Province of Quebec. I do not like the use of the word "may". Take the case of the person who, being sentenced, is not thereby deprived of his driving permit, but whose license is nevertheless automatically withdrawn from him by the Motor Vehicle Licence Bureau. Why do we say "may" then in the Province of Quebec? Is that province alone in this respect?

Mr. CASGRAIN: At this time you are being called upon to discuss Federal general legislation, criminal law, but we have here what I called a grey area. We are faced here with a somewhat difficult position jurisdictionally as far as highway control is concerned. In some provinces it is felt that it should be automatic for the provincial authority to be enabled to withdraw the driving licence each time a person is found guilty of such an offence. On the other hand if you find it is a little too much perhaps you could do something about it.

Mr. CHOQUETTE: What then, are the valid reasons which a policeman could have to force anybody to submit to a test? Say somebody has been to a party, has had one or two cocktails, and then goes on the road, and exceeds the speed limit. In a 60-mile zone he was going 75, he is stopped. The policeman smelling his breath notices that it smells alcohol, the cocktails our friend has had.

Mr. CASGRAIN: Speaking only for myself here—I do not like speaking for myself too much in this connection—I wonder if we could not distinguish here between reckless driving, which is a federal offence, an offence under the Criminal Code, and exceeding the speed limit which comes under a provincial statute?

Mr. CHOQUETTE: This is a very hypothetical case but even so it may happen quite often. It is like the fellow who has had two cocktails, who exceeds the speed limit and the policeman says "Aha, this fellow might be drunk".

Mr. CASGRAIN: I wonder if this would not be an offence created by provincial statute. Supposing we have a fellow who is doing 35 miles an hour in a 30-mile zone. He would be committing an offence against a provincial statute but I wonder why he could be convicted on a federal statute for refusing to submit to a test.

Mr. CHOQUETTE: But he has not been accused of reckless driving here. This is a matter of pure coincidence. The fellow has exceeded the speed limit and the policeman smells alcohol on his breath. Is that a good and valid reason to refuse to submit to the test?

Mr. CASGRAIN: If he were doing 35 miles an hour in a 30-mile an hour zone, and if he has had only one draft, I think he would have a valid reason to refuse.

Mr. CHOQUETTE: Good.

The CHAIRMAN: Mr. Ryan, Mr. Wahn and Mr. Latulippe.

Mr. RYAN: I would like to ask Mr. Casgrain, if it is contemplated by the Canadian Bar Association that the trained breathalyzer technician will also be trained in blood and urine tests in all cases so that he could handle all tests that may be requested by the accused, without taking the time to call in another expert?

Mr. CASGRAIN: No, that was not contemplated because we understand that the breathalyzer test is something which requires only a very limited amount of technical knowledge, while the urine test and the blood test require qualifications that are much more extensive.

Mr. RYAN: Was it contemplated by the Canadian Bar Association that our legislation should require the ability to test in all three fields be present at the testing site? Would all the facilities be there and all the experts be there contemporaneously?

Mr. CASGRAIN: No, because the man is entitled to get a sealed sample of his own blood and a sealed sample of his urine when he is arrested. At the same time that he gives a sample of his breath he is entitled, and he must be told that he is entitled, to receive samples of his blood and urine and those he can have analysed any time he receives them.

Mr. RYAN: Is there not a weakness in this particular area when you have a man who is intoxicated or on the borderline of impairment. He may be able to establish, if he could get these tests taken right away, that he was on the right side and be free that very night; otherwise he has to take good care of these samples of blood and urine, and how can he do it if he is kept locked up?

Mr. CASGRAIN: First of all, I would say that he should not be kept locked up unless he is in such a state of intoxication that it is not safe for himself and for others if he is released. People are not supposed to be locked up just for an offence.

Mr. RYAN: Suppose he is intoxicated by some means other than alcohol and there was an imperfection in the test on the breathalyzer?

Mr. CASGRAIN: Well then, he would have other evidence. He could have his own doctor testify as to his peculiar state of health which makes him appear intoxicated when he is not intoxicated.

Mr. RYAN: You do not see any possible chance of these two samples going stray in the hands of a man who has been arrested?

Mr. CASGRAIN: Perhaps the attorney general or the police authorities might provide that some system be established to safeguard the accused person. That would be the administration of the law.

Mr. RYAN: There may be an area of regulation needed there.

Mr. CASGRAIN: It might well be recommended to the authorities and they may do it.

Mr. RYAN: Is it the opinion of your association that if this were made the law of Canada that there would be quite a period of time before it would apply equally over the whole of Canada? In other words, would it be in effect in the cities or metropolitan areas more so than in the outlying areas for any considerable period of time?

Mr. CASGRAIN: That would quite likely happen.

Mr. RYAN: There is no doubt in my mind that the Canadian Bar Association asking the federal parliament to make this a crime in the Criminal Code, even though you speak of it as an offence, because in section five of your resolution you recommend, "That sections 222 and 223 of The Criminal Code be deleted and new section enacted creating a new offence of impaired driving only."

You are seeking that this be made, to put it bluntly, a crime on the statute books of Canada?

Mr. CASGRAIN: Yes.

Mr. RYAN: The only way we really have jurisdiction is to make it a crime even though we label it an offence?

Mr. CASGRAIN: You must distinguish between what is a crime and what is just an offence. In the old code we used to distinguish very carefully between a crime and an offence. Now we do not distinguish as much. There was a very distinguished committee, on which the father of one of the present members sat, which revamped the Criminal Code and made it much shorter and much clearer than it was. They did not make such a distinction between a crime and an offence. Certainly it should not be considered a crime even if it is in the Criminal Code; it is an offence.

Mr. COOPER: I think in the way that the courts have used the word "crime" that this is a crime. It is in the Criminal Code. It is not an indictable offence, it is punishable on summary conviction.

Mr. RYAN: It is a lesser crime.

Mr. COOPER: It is a lesser crime; it is a minor crime.

Mr. RYAN: That is probably a more accurate way of referring to it.

Mr. COOPER: Yes.

(Translation)

Mr. CHOQUETTE: It would be an infraction?

Mr. CASGRAIN: Yes, it would be an infraction.

Mr. CHOQUETTE: But it would not be a criminal offence?

Mr. CASGRAIN: That is right.

(English)

Mr. RYAN: Mr. Chairman, I would like to question the Canadian Bar Association in connection with section 1(a) of the resolution where it speaks of ".8 parts per thousand of alcohol in venous blood". Why does the Canadian Bar Association want the word "venous" in there?

Mr. CASGRAIN: That is what the doctors have told us.

Mr. RYAN: It may have been by Dr. Ward Smith himself.

Mr. CASGRAIN: There is venous blood and arterial blood, I think.

Mr. RYAN: Yes, possibly some other member of the committee might have a better recollection of this than I have, because I believe I had to leave for a short time at the time it was being discussed, but did not some witness say that the word "venous" should not be in Mr. Mather's bill? If so, perhaps it should not be in the resolution of the Canadian Bar Association either.

Mr. MATHER: I do not recall that, sir, but I took my "venous blood" regulation from what the doctors recommended too.

Mr. RYAN: I will check into that. That is all. Thank you.

Mr. WAHN: Mr. Chairman, it appears that the resolution of the Canadian Bar Association recommends the creation of a new offence, which is the offence of driving with an excess of blood alcohol level, to be determined by a breathalyzer test conducted by a properly qualified technician. The witnesses will no doubt correct me if I am wrong, but I did get the impression from what has been said that in some areas of Canada breathalizers will not be immediately available, or perhaps there will be an even greater difficulty in obtaining properly qualified technicians.

Did the committee of the Canadian Bar Association give any thought to the question of whether this would mean that what is a crime, in effect, in one area of the country is not a crime, in effect, in another? If that is so, is this a basic objection to the creation of a new offence, bearing in mind the fact that ordinarily we assume that criminal laws should be equally applicable to all citizens and not just to those living in the larger cities where the breathalyzer is more readily available.

Mr. CASGRAIN: Our committee did consider it and felt that the balance of convenience was on the side of it being better that a few people would not be prosecuted than there be no proper deterrent to a person driving with alcohol in his blood.

Mr. WAHN: Is it similar to the offence of driving at an excessive rate of speed? I suppose in remote areas it is easier to get away with driving at 70 miles an hour than it is driving down Yonge Street in Toronto or St. Catherine Street in Montreal. Is it the same principle?

Mr. CASGRAIN: The principle of the suggested law is exactly the same as driving beyond a certain speed limit.

Mr. WAHN: Is it technically possible to take a sealed sample of breath, blood or urine and keep it for some time and then make the test, or will the sample deteriorate or change? In other words, can a test of breath, blood or urine be carried out accurately a considerable length of time after the sample has been taken or must it be conducted right away?

Mr. CASGRAIN: I suppose our committee has satisfied itself on that by making inquiries of the medical profession, but perhaps your committee would wish, and quite rightly so, to submit that same question to the Canadian Medical Association.

Mr. COOPER: Mr. Chairman, my information is gleaned from reading debates within our own association and I know that a period of twelve hours was there advanced—I think authoritatively—during which a breath sample could be analysed accurately. It runs in my mind the period may be longer than that, but that period of twelve hours was very definitely accepted as a minimum. I do not know about blood and urine. I think almost indefinitely, but I have no direct knowledge of it and undoubtedly that information could come from medical people.

(Translation)

Mr. LATULIPPE: Mr. Chairman, according to the reports and to the evidence we received last week, it was demonstrated that accidents caused by alcohol were not very large in number and constituted a rather small percentage of the whole. Is it really worth our while to amend the Criminal Code only because certain individuals might have been drinking too much? Further, you apparently want to subject some people to tests. It could be proved, I believe, that a large number of accidents have been caused by people who have absorbed alcohol without these accidents necessarily being due to alcohol. These accidents would have happened, alcohol or not. These people are to be accused for reasons which are not justifiable. Because a man has absorbed alcohol, he is being punished. He is being brought before the courts. He is fined, he is subjected to all kinds of penalties, and yet a large number of accidents happen to people who have not taken any alcohol. This person, on the other hand, who has had alcohol, will be punished if he is submitted to the test and found to have an alcohol content in his blood even though alcohol has nothing to do with the accident. There is something unfair, it seems to me, in this regard. The average increases in risk.

(English)

Mr. COOPER: The average risk of being involved in an accident for drivers as a whole increases as the concentration of alcohol in the blood rises beyond about .04 per cent.

(Translation)

Mr. CASGRAIN: There are various questions here. The first question is rather an affirmation with regard to statistics. Of course, you can draw all kinds of inferences from statistics, but no doubt you have examined the White Paper put out by the United Kingdom Parliament in December 1965. In this White Paper, the Minister of Transport of the United Kingdom Government indicates the reasons why he favours the adoption of legislation of the type at present under discussion. You find there a chart which appears to be very impressive indeed. It relates to the average increase in risks.

(Quotation in English by Mr. Casgrain as follows: "The average risk of being involved in an accident for drivers as a whole increases as the concentrations of alcohol in the blood rises beyond about 40 in 10,000...")

(Translation)

We have a very impressive chart here relating to the increase in accidents. Now, even if statistically we were to say that out of 100 accidents only 20 people are killed and 50 and injured, are we to set at a level of 50, 10 or 100 the percentage of killed and injured necessary to make the breathalyzer test mandatory? Where are we going to stop to determine if the inconvenience to which the individual is being subjected in such that it must override the deterrent effect of the test? If we have one accident out of one thousand, one accident out of one hundred, this is a relatively considerable proportion to begin with. I think this is not so much a statistical matter. The matter should be weighed on another scale. We should be thinking here of rights and violations of rights. My rights stop where your rights start.

Mr. LATULIPPE: Last week one of our witnesses demonstrated to us that the percentage of car accidents brought about by alcohol was rather minimal.

Mr. CASGRAIN: It might be minimal compared to others but it might be considerable per se. Absolutely it might be large. We are beginning to discover—and you probably will have studied that I have no particular knowledge in this matter; I speak only of what I know that far more accidents are caused by mechanical defects in cars, faults in the brakes, steering mechanism, etc. These bring about accidents. They have not been discovered, you drive along, and then suddenly there is some unexplained failure. How many accidents are brought about by mechanical defects? How many accidents are due to fatigue, how many are due to so many other causes? We really do not know, but I do not think we should be seriously or, at least overly influenced by statistics when we are dealing with human rights. All the statistics we have show us, show lawyers especially, that we have a large number of fatal accidents brought about by alcohol. We really do not know the actual number, but we know that there are a lot of them.

Mr. LATULIPPE: However, my point is that a lot of accidents are attributed to alcohol even though this is not a point which has been established beyond doubt even though some alcohol has been absorbed.

Mr. CASGRAIN: It might not be the *causa causans*.

Mr. LATULIPPE: Well, we have road conditions, we have dangerous parts of roads, etc.

Mr. CASGRAIN: But even if the road is in a poor conditions, the driver who is perfectly sober will have better reactions. He will be better able to adapt to these road conditions. He will react more quickly if he is sober than if he has been drinking.

Mr. LATULIPPE: But could not the Canadian Bar Association do something to educate the people, to attempt to do away with various causes—

Mr. CASGRAIN: You can hardly imagine to what extent our Association's time is taken up with various surveys regarding amendments to laws. Our appearance

before the committee to-day is only one indication of the interest we have in these legal problems. As far as sociological problems are concerned, I believe it would be best to leave that matter to those most competent to deal with it.

(Translation)

Mr. LATULIPPE: But we might indicate to the people that there are some causes that have been unsuspected so far. Perhaps you could be dealing not only with penalties, but with preventive action.

This resolution of ours provides for preventive action.

(English)

The CHAIRMAN: Well, I hesitate to interrupt, but it is now one o'clock, about half an hour past our usual adjourning time. We have a lot of questions.

I will stay as long as the members of the Canadian Bar Association are willing to answer any questions that members may wish to ask. Make them short.

Mr. MATHER: Mr. Chairman, I have two questions which will take about 30 seconds. Just to clarify matters in my own mind, I want to ask this. Is it correct to say that the Canadian Bar Association is seeking to establish in law a blood alcohol level—and they recommend .08 per cent—above which it would be against the law to drive a vehicle and that they would make a test for that mandatory on the breathalyzer basis, and that they have satisfied themselves that there is no impairment or infringement of civil liberties involved.

Mr. CASGRAIN: Yes.

The CHAIRMAN: Any more questions?

Gentlemen, before we adjourn, first of all very briefly I would like to thank Mr. Casgrain, Mr. Cooper and Mr. Merriam for their presence here today, for their presentation and for the very clear and comprehensive way in which they have answered the many questions which have been directed at them.

Just before you go, gentlemen, I would like to have a motion that the submission of the Canadian Bar Association be appended to today's proceedings and probably the mover and seconder might include in that the resolution which Mr. Casgrain has handed to me and which is certified by the secretary as the resolution of the Canadian Bar Association, that it be an exhibit so that the validity of the resolution can never be questioned.

Motion agreed to.

Appendix 8

CANADIAN BAR ASSOCIATION
RESOLUTION

"The Canadian Bar Association recommends legislation as follows:

1. Making unlawful the driving of a motor vehicle by a person with a blood alcohol level to be fixed by the legislation provided,
 - (a) that the level should not be less than .08 per cent or .8 parts per thousand of alcohol in venous blood;
 - (b) that the blood alcohol level be determined by analysis of breath, which shall be *prima facie* evidence only;
 - (c) that the accused is offered a sample of the material to be tested to determine the level;
 - (d) that the analysis on behalf of the Crown Prosecution is conducted by a duly qualified technician; and
 - (e) that the accused must be afforded the opportunity to cross-examine everyone who takes part in the taking of the sample and analysis of it including the person who is responsible for the maintenance of the equipment used in the analysis.

2(a). Making it an offence for any person to refuse without cause to give a sample of breath when required to do so by any law enforcement officer who has reasonable and probable grounds for believing that such person has committed an offence.

(b) Making evidence of the test so conducted admissible upon the charge set out in 1 above or upon a charge of impaired or drunk driving.

3. The person whose conduct is being investigated shall be advised that at his request he is entitled to be given a sealed sample of his own blood or his own urine at the time any other test is conducted.

4. That the offences recommended above be punishable on summary conviction only and that the penalties therefor shall be as for a first offence on impaired driving with no minimum penalty but with the power to prohibit driving on the highways in Canada in the course of any period not exceeding three years.

5. That Sections 222 and 223 of The Criminal Code be deleted and a new section enacted creating a new offence of impaired driving only."

- - - - -

Certified a true copy of a Resolution passed by The Canadian Bar Association at its Forty-Eighth Annual Meeting in Winnipeg, Manitoba on August 30, 1966.

Ronald E. Merriam.
Secretary.

Appendix 9

FEBRUARY 19th, 1965.

REPORT OF SPECIAL COMMITTEE ON
BLOOD ALCOHOL AND IMPAIRED DRIVING

(By P. D. Isbister)

As Chairman of this Committee I now beg to report on its deliberations and to submit its recommendations.

COMPOSITION OF COMMITTEE

The Committee was as follows:

His Honour Judge Harold W. Pope, District Judge, Moose Jaw, Saskatchewan.

His Worship Magistrate S. Tupper Bigelow, Q.C., Toronto, Ontario.

Walter C. Newman, Q.C., Winnipeg, Manitoba.

A. Stewart McMorran, Q.C., City Prosecutor, Vancouver, British Columbia.

Hazen Hansard, Q.C., Montreal, Quebec.

John T. Weir, Q.C., Toronto, Ontario.

P. D. Isbister, Q.C., Toronto, Ontario.

TERMS OF REFERENCE

This Committee was appointed after The Canadian Bar Association was asked to consider the following recommendation of a Committee of The Canadian Medical Association:

"Your Committee specifically recommends legislation which will—

1. Recognize the breathalyzer test, carried out by properly trained technicians, as an accurate method of determining blood alcohol levels, and that the results of this test be admissible as legal evidence.

2. Make it unlawful to drive a motor vehicle with a blood alcohol level of more than .05 per cent.

3. Make a submission to the breath test mandatory when requested by law enforcement officers."

(See Canadian Medical Association Journal September 1, 1962, Volume 87, Article 218)

Your Committee has understood its task to be as follows:

(a) To consider the evil to which the existing and proposed legislation is directed, i.e. death, personal injury and property damage caused by the impairment by alcohol of ability to drive a motor vehicle.

(b) To consider the adequacy of the existing legislation.

- (c) To weigh the merits of The Canadian Medical Association recommendations.
- (d) To ensure that any proposed legislation shall not work an injustice to or constitute an undue invasion of the rights of the individual to fair and equal treatment before the law.

EXISTING LEGISLATION

Your Committee considered the existing legislation bearing in mind the principle that if it is not necessary to change, it is necessary not to change. The appalling statistics of accidents on the highways of Canada persuaded the Committee that it is imperative that there be a new legislative approach. Needless to say the extensive material which the Committee considered reveals that there are a number of other causes of accidents on our highways and that alcohol is by no means the only culprit. However, those other matters were not within the terms of our reference.

The existing legislation and in particular the impaired driving section is giving rise to an ever increasing number of convictions. This trend may reflect favourably on our law enforcement agencies but it demonstrates that the legislation is not achieving the desired result, namely a lower incidence of driving while impaired. Your Committee believed that it should concern itself with measures which would achieve the latter end and not merely give rise to more cases in our Courts.

Section 223 of The Criminal Code makes it an offence to drive a motor vehicle while the ability to do so is impaired by alcohol. Your Committee believes that the inherent defect in that section is that few people will admit to themselves that their ability to drive has been impaired; the problem is compounded by the fact that their judgment of their ability to drive in those circumstances is affected by the alcohol consumed. To reduce the incidence of driving while impaired, legislation should be deterrent and not merely punitive. Your Committee is therefore of the opinion that effective legislation must create an atmosphere in which the decision will be not to drive in such circumstances. We therefore believe that there must be a new concept unrelated to ability to drive or the confidence of the driver in such ability.

THE BLOOD ALCOHOL LEVEL OFFENCE

The Canadian Medical Association recommendation is that Parliament make it unlawful to drive a motor vehicle with a blood alcohol level of more than a fixed percentage. There is ample precedent for this in other jurisdictions. In some the blood alcohol level raises a rebuttable presumption and in others it is conclusive of guilt. As to the former the issue is still one of impairment; thus, the question facing the driver who has been drinking remains as it is today, and the atmosphere of decision is the same. On the other hand if the sole issue before the Court is the blood alcohol level without regard to, or the need for proof of, impairment, then a much different question is presented to the individual who has been drinking and who has to decide whether or not he should drive his car. He does not have to admit to himself or to his friends that his abilities have been impaired. On the contrary everyone can readily learn the rule of thumb for calculating whether or not he is going to be in breach of the law.

We recognize that this offence draws an arbitrary line. We think that there is an analogy in the same field, i.e., the speed limits on our highways. We believe that the public would and indeed must be educated to accept a similar arbitrary limit of blood alcohol level and we believe that fixing such a limit at an appropriate level is not asking too much, having regard to the interest of the community as a whole.

THE RIGHTS OF THE INDIVIDUAL

Having accepted that it is the peculiar responsibility of the Bar Association to ensure that the rights of the individual are not unduly affected, your Committee propounded to itself three questions as follows:

1. Would the enactment of the blood alcohol level offence work an unwarranted injustice or an undue invasion of the rights of the individual to fair and equal treatment before the law? Your Committee was of the opinion that this question is to be answered in the negative.

2. Can there be a fair trial of the issue which would be before the Court in a prosecution for such an offence? Your Committee is of the opinion that, assuming certain safeguards referred to later, there are existing means for determining blood alcohol level and that therefore this question is answered in the affirmative.

3. What safeguards are essential? Any endorsement by your Committee of a blood alcohol level offence is predicated on there being adequate safeguards of the rights of the individual and these we consider to be as follows:

- (a) In determining blood alcohol level the principal tests have used specimens of breath, blood and urine. The blood test would constitute an unwarranted and unjustified trespass of the person. Urine is considered by the authorities in the field to be too unreliable to form the basis of conviction. On the understanding that blood alcohol level can be reliably determined by analysis of breath sample and that modern techniques make it possible for the accused to be given a sample of breath which he may take with him for an analysis by an analyst of his choice, your Committee is prepared to accept the breath test but it requires that the accused be offered a sample of the breath which is to be tested by the prosecution.
- (b) The analysis for the prosecution must be done by a duly qualified technician.
- (c) The accused must be afforded the opportunity to cross-examine everyone who takes part in the taking of the sample and analysis of it including the person who is responsible for the maintenance of the equipment used in the analysis.

THE BLOOD ALCOHOL LEVEL

Your Committee believes that an unreasonably low level would constitute an unwarranted and unjustified invasion of the rights of the individual. On all the material before it, your Committee is of the opinion that the level should not be lower than .1% or 1.0 parts per thousand of alcohol in venous blood.

HAVING THE CARE OR CONTROL OF A MOTOR VEHICLE

While your Committee is prepared to endorse legislation making it an offence to drive with a blood alcohol level of a given amount, it is of the opinion that such legislation should be confined to driving and should not include having the care and control of a motor vehicle in such circumstances.

PENALTY

Your Committee is of the opinion that the penalty for the blood alcohol level offence should be not more than the maximum for a first offence of impaired driving without the minimum prescribed therefor and that in addition the Court ought to be at liberty to make an order prohibiting the accused from driving a motor vehicle on the highways for any period not exceeding three years. Your Committee is further of the opinion that the offence should be punishable on summary conviction only.

COMPULSORY TEST

Your Committee recognizes that concurrent with the enactment of a blood alcohol level offence there must be legislation providing for a compulsory test. There must therefore be a penalty attaching to the refusal to provide a sample for such a test when reasonably requested so to do. Your Committee is of the opinion that the penalty should be the same as for impaired driving as any lesser penalty would in the circumstances be an inducement to refuse. However, your Committee requires that great care be taken in drafting legislation creating such an offence and that the rights of the individual be protected by the following provisions.

- (a) The law enforcement officer who requires that a sample of breath be provided must have reasonable and probable grounds for believing that the accused has committed an offence.
- (b) The refusal to provide the sample must be without cause.

DRUNK DRIVING AND IMPAIRED DRIVING

At its 44th Annual Meeting at Halifax on September 1, 1962, The Canadian Bar Association resolved by a majority vote that Sections 222 and 223 of The Criminal Code relating to drunken driving and impaired driving respectively, be deleted and a new section enacted creating a new offence of impaired driving only. Your Committee desires to say that its recent examination of the question referred to it persuades it that that resolution was a sound one but it recommends that there be no minimum penalties attaching to that offence.

SECTION 224 (4)

In the course of its deliberations your Committee considered a suggestion that this sub-section be deleted having regard to its proposal that compulsory test legislation be enacted. Your Committee is of the opinion that the rule that the refusal to take a test or give a sample is not admissible in drunk or impaired driving proceedings ought not to be disturbed and that evidence of such refusal should be admissible only in support of a charge of refusing to give the sample.

RECOMMENDATIONS

Your Committee therefore recommends legislation as follows:

1. Making it unlawful to drive a motor vehicle with a blood alcohol level to be fixed by the legislation provided.

- (a) that the level should not be less than .1% or 1.0 parts per thousand of alcohol in venous blood,
- (b) that the blood alcohol level be determined by analysis of breath only,
- (c) that the accused is offered a sample of the material to be tested to determine the level,
- (d) that the analysis on behalf of the Crown Prosecution is conducted by a duly qualified technician, and
- (e) that the accused must be afforded the opportunity to cross-examine everyone who takes part in the taking of the sample and analysis of it including the person who is responsible for the maintenance of the equipment used in the analysis.

2. Making it an offence for any person to refuse without cause to give a sample of breath when required to do so by any law enforcement officer who has reasonable and probable grounds for believing that such person has committed an offence.

3. That the offences recommended above be punishable on summary conviction only and that the penalties therefor shall be as for a first offence on impaired driving with no minimum penalty but with the power to prohibit driving on the highways in Canada during any period not exceeding three years.

4. That Sections 222 and 223 of The Criminal Code be deleted and a new section enacted creating a new offence of impaired driving only.

Your Committee desires to acknowledge the co-operation afforded it throughout its deliberations by Ronald C. Merriam, Q.C., and your Chairman concludes this report by expressing his appreciation of the co-operation of all members with him and with each other.

All of which is respectfully submitted.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

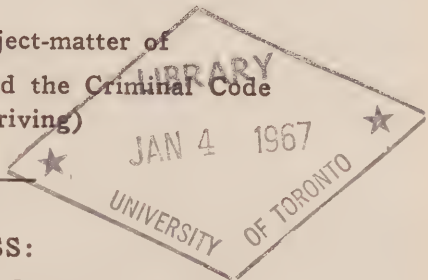
No. 15

THURSDAY, NOVEMBER 3, 1966

Respecting the subject-matter of
Bill C-87, An Act to amend the Criminal Code
(Impaired Driving)

WITNESS:

Dr. I. M. Rabinowitch, O.B.E. (Retired)



ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Choquette,
Mr. Chrétien,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,

Mr. Laflamme,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McCleave,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Trudeau,
Mr. Wahn,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 3, 1966.
(19)

The Standing Committee on Justice and Legal Affairs met this day at 11.15 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Cameron (*High Park*), Choquette, Forest, Guay, Honey, MacEwan, Mather, McCleave, McQuaid, Ryan, Tolmie (11).

In attendance: Dr. I. M. Rabinowitch, O.B.E.

The Chairman introduced Dr. Rabinowitch, who made a statement regarding Bill C-87.

At the conclusion of his statement, he was questioned by the Committee.

*Agreed,—*That the graph illustrated by Dr. Rabinowitch showing comparative results from analyzing the amount of alcohol in arterial and venous blood, be appended to today's proceedings. (*See Appendix 10*)

The Chairman thanked Dr. Rabinowitch for his valuable contribution to the Committee's proceedings.

At 1.10 p.m., the Committee adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, November 3, 1966.

The CHAIRMAN: Gentlemen, I see a quorum. We have with us this morning Dr. I. M. Rabinowitch who we will have the pleasure of hearing. The effects of alcohol on the blood fall in the medical field of metabolism. The Ontario College of Physicians and Surgeons calls Dr. Rabinowitch "a renowned authority in the fields of metabolism and diabetes". A medical graduate of McGill, he served in the army in world war I, and joined the University's medical faculty in 1922. In 1921 he organized and was director of Montreal General Hospital's department of metabolism and clinic for diabetes, posts he held until 1947.

He made a study of the metabolism of eastern arctic Eskimos for the government in 1935. In 1939 he was sent to England to organize a chemical-warfare, mobile laboratory for the detection of poison gases for the Canadian army. He was later scientific advisor for the defence against gas warfare in Canada. For these services the late King George VI awarded him the Order of the British Empire.

Dr. Rabinowitch is a Fellow of the Royal College of Physicians of Canada and of the American College of Physicians. McGill awarded him a Doctorate of Science, the 25th such degree awarded by McGill in a century.

Without further ado, allow me to introduce Dr. I. M. Rabinowitch, O.B.E.

Dr. I. M. RABINOWITCH, O.B.E. (*Retired*): Mr. Chairman, gentlemen, I regard it as an honour indeed to be invited to present my views to you on a matter which concerns administration of justice in our courts of law.

I am particularly pleased to be here because I shall have the opportunity to present my views in my own way and which, as you know, most of you being of the law profession, is not always permitted under the laws of evidence in a court of law.

A trial, as you all know, is not—and by its very nature cannot possibly be—a scientific investigation, because whatever the issue is before the courts, be it criminal or be it civil, the issue is fixed, and, therefore, since the issue is fixed, the questions counsel may ask the witness are fixed, and what the witness may say in reply is fixed.

This is not the way truth is arrived at in science. Now, gentlemen, were you all physicians, and not only physicians but authorities on what is known as human metabolism, I am quite certain that I could, in a very few minutes, prove to you, beyond all reasonable doubt, that the breathalyzer, or any other breath test, has no place in a court of justice, whether it is a breathalyzer, as I have said, or whether it is any other breath test, because we must recognize that Bill No. 6-87 merely mentions "breath test". It does not specify any particular breath test. However, I am quite satisfied that in the end I shall be able to show what I wish to show.

I wish also to say at the outset that I do not intend in the least to enter into any theoretical discussion, because for this there is neither the time nor is this the place. I propose to deal entirely with incontestable facts—facts proven through the years in the best laboratories that one can mention.

I should also say at the outset—and some of you are not acquainted with the fact—that I am almost entirely alone in Canada in opposing breath alcohol tests. I believe that there is one exception only, and by coincidence he also happens to be a professor of medicine, whose specialty also happens to be internal medicine and whose field happens to be metabolism. This is Dr. Max Cantor of Edmonton.

Again, not to confuse the issue, let me say at once that as a machine for the detection and quantitative examination of alcohol there is nothing wrong with the breathalyzer, or with any other test; that is, if I were to take a sample of air from this room and were I to add a known amount of alcohol you could detect that amount of alcohol with reasonable accuracy—at least with the accuracy sufficient for medico-legal purposes. But here we are not concerned with a sample of air from this room; we are concerned with the breath of a human being, which, as we shall see shortly, is an entirely different matter.

Also to clarify the picture, and not to become involved unnecessarily, I also wish to say that statistically there is nothing wrong with the breathalyzer or any other breath test. If I were to take a sample of blood from every person in this room after he has had a drink of alcohol, and I determine the amount of alcohol in the blood and then simultaneously determine the amount of alcohol in the breath, the average of the blood would agree quite closely—certainly sufficiently for medical-legal purposes—with the alcohol in the breath. Breath and blood would agree statistically. But being lawyers, you will appreciate that the problem in a court of law is not a mass of statistics; the problem is a particular person who, it is alleged, had had in his blood a particular amount of alcohol at a particular time. It is in the individual, as I propose to show, that the test breaks down and breaks down very badly.

It may only take about two or three minutes, but a brief historical background of the development of this test is important, as we shall see later in its application.

Breath tests, gentlemen, or any other chemical tests, are by no means new. The first attempt to use one in a court of law dates back to 1930, and, in fact, was used in Sweden in courts of law at that particular time; and they used blood tests, urine tests, and so on. But, gentlemen, long before there was any such thing as a traffic problem, long before anything was known by medical-legal experts about blood alcohol, it became a very important problem in the management of the diabetic. At that time—this was before the days of insulin which, incidentally, dates me pretty well—the situation of the severe diabetic was very tragic. If he did not follow treatment he died of diabetic coma. If he followed treatment he died of starvation. But he died.

Then it was discovered that alcohol was the one substance that a diabetic could use 100 per cent efficiently. He could get 100 per cent of his calories. It did not take us very long to find out, though, that, although it was good as a food, it could be very harmful, but at that time we knew very little as to why it could be harmful. We knew what damage it was causing, but we did not know how it was

caused. We therefore had to thoroughly investigate the whole situation of alcohol: In what manner it is absorbed from the stomach and intestines into the blood; the rate of its absorption; the way it distributes itself in the particular organs in the different parts of the body; the way the different organs utilize it; and the way it is eliminated; and, in fact, gentlemen, the statistical relationship between the level of alcohol in the blood and the degree of intoxication was known exactly 100 years ago, in 1866.

Because of all of this information it was necessary to test various body materials for alcohol, and the test for the breath dates back to 1891. Although today, as I said, for medico-legal purposes, one can do the test with an error of about five or ten per cent—that is alcohol from the atmosphere, not from the breath—we had to devise methods, gentlemen, by which the permissible error was not more than one one-hundredth of one per cent. With an accuracy of one in 10,000 we had to determine what was going on within the body.

I am going to hand this around just to show you gentlemen the types of machines we used. One is from Cornell University used fifty years ago, and the other happens to be my own device at the Montreal General Hospital, used exactly 40 years ago.

That gives us the background, and we are going to see what that background is going to mean. It is going to mean this, gentlemen—and this has been my problem throughout the last quarter of a century in courts of law: It involves chemistry; it involves physics; it involves physical chemistry; it involves physiology; it involves physiological chemistry; pathology; pathological chemistry; toxicology and chemico-medicine. There is no question that the experts that we have—and this is no derogation here; I have the greatest respect for every one of these men—are highly authoritative in their own particular fields—there is no question about that at all—but with one one exception, out west, there is not a single one in Canada who is an authority on metabolism of alcohol in the human body. They are authorities on pharmacology, as it concerns alcohol, authorities in biochemistry as it concerns alcohol, or on physiology, or pathology.

The problem is the same in the United States. The National Safety Council of the United States has a special committee on chemical tests for intoxication; which consists of seven men, gentlemen, of whom one only happens to be a physician. And he happens to be a pathologist. Undoubtedly, it is a very important field in medicine—we could not do without pathologists—but pathology is one aspect only.

With that background, let us consider the tests. Basically, I think we can forget the breathalyzer. Let us speak in terms of "breath tests," because this bill before you, gentlemen, does not specify any particular breath test, and, in fact, in the vast majority of cases, the breathalyzer is not as yet used.

The man who invented the drunkometer, Dr. Harger, in 1938, still prefers the drunkometer to the breathalyzer. He published an article only recently. It just so happens, though, that whichever test we use, basically they are all on the same principle, whether it is the drunkometer, or the alcometer, or the intoximeter, or the breathalyzer, or any other test. It is based on a particular principle, and I want to quote it verbatim because we are going to have to stress almost every word of this later on. I am now quoting the original article on breath tests by Dr. R. N. Harger. It is his drunkometer. "The basic principles underlying all

breath alcohol tests is that there is a constant"—and underline that word "constant"—"there is a constant ratio between the rates of alcohol per unit volume of blood and alveolar air". Alveolar air simply means the air from deep in the lungs. Therefore, in all cases there is a constant ratio. Well, naturally, if there is a constant ratio and if I know what there is in the breath I should know what there is in the blood. With this constant ratio, Dr. Harger comes to this conclusion from his data. "The data show"—I am quoting verbatim—"in practically all of the cases the figures obtained for the breath and for the blood gave essentially the same information." We certainly could not want any more definite statement than that.

The National Safety Council of the United States stresses that principle. Again, I quote verbatim. "The basic principle governing the operation of the drunkometer, the intoximeter and the alcometer" and so on, "is the constant ratio existing between the concentration of alcohol in the alveolar air and blood, approximately 1 in 2100," or 2000 in round figures.

In 1958, Dr. Ward Smith again repeated the same statement with regard to the breathalyzer. I now quote Dr. Ward Smith verbatim. "One part of alcohol contains the same amount of alcohol as 2100 parts of air." You cannot have any more definite a statement than that.

I have a statement here from a Dr. Lockerby. He was a medical legal expert for the Crown in Saskatchewan, but I think the less said about him the better. I doubt very much whether this man will ever again testify in a court of law in Saskatchewan by the time I get through with him. The man was absolutely dishonest, so dishonest that before the trial was finished the Crown prosecutor dismissed him from the case. Here was the Crown prosecutor, in a case of criminal negligence, with nobody to assist him to cross-examine me. Then the next morning, to add to it, the Crown laboratories in Regina fired him.

We are down now to where we have a constant ratio, 2100 to 1, and, therefore, if you have a constant ratio, certainly if I examine the breath I should know what is in the blood.

Suppose, gentlemen, the ratio is not a constant ratio. Suppose the ratio could be 1200 to 1, instead of 2100 to 1. Here you would have an enormous error. A level of .8, which is in the bill, would now become .6, or something like that. We must see where they got this constant ratio from, and they all quote, without a single exception—the intoximeter, the drunkometer, the breathalyzer—they all quote two authorities of Stockholm, physiologists, called Liljestrand and Linde whom you will perhaps just remember by "L and L", for short. They quote Liljestrand and Linde as having said that the 2000 to 1 is a constant ratio.

Gentlemen, it is obvious to me that there is not a single one of these experts who could have ever read carefully, or read at all, L and L's paper, because I have L and L's paper here. What Liljestrand showed, which, in fact, we found two or three years, I think, before Liljestrand—was that the ratio only applies after all of the alcohol has left the stomach, has been absorbed into the body, has reached the maximum concentration and is now being eliminated from the body. The importance of that we shall see later. Therefore, it is not a constant ratio; it is only a constant ratio at a particular time after.

Now, what is the ratio before that? The ratio, gentlemen, before that shows that you can have a 300 per cent error.

In other words, if I catch the breath of, say, a man who had a drink and was arrested fifteen to twenty minutes afterwards, and find .8 in his breath, gentlemen, that breath might be only .2 parts. We are going to come to specific figures later on.

Therefore, they all only partly quoted Liljestrand paper. If any of you gentleman wishes to see it it is here. It is the original, in German. This is what he showed—that there is a constant ratio of 2000 to 1 in round figures, but it applies only after all the alcohol has left the stomach, has passed into the blood, has reached its maximum concentration in the blood and is now beginning to disappear from the body. If you catch it before that period the error may be as high as a 50 per cent error, or a 100 per cent or a 200 per cent error or a 300 per cent error.

Dr. Linde's article was published in 1930 and this happens to be some of my own data published in 1928 or 1929.

The question, therefore, gentlemen, that we should ask ourselves here is: How then do we explain Dr. Harger, an outstanding pharmacologist, one of the most careful experimenters in the United States—how do we explain his conclusion, his observation, that in practically all cases the ratio is constant.

What I propose to show, gentlemen, is that his conclusion does not agree with his own data. Again I want to emphasize the difference between reading an author's conclusions and reading his data. Personally, I would never pay any attention to anybody's conclusion. I want to see the man's data.

Here is what some of his data show, gentlemen. For example, where the blood showed .7 parts per thousand, the breath showed 1.2 parts per thousand; where the blood showed .8 parts per thousand, the breath showed 1.4 parts per thousand, and so on. This occurred, gentlemen, in 10 of 121 subjects. In other words, the test broke down badly. Notwithstanding his conclusions, but his own data—and I have the article here for anybody who wished to see it; this is Harger's original paper—the test broke down in 1 in 12 cases. As lawyers, you might ask yourselves this question: Where would you be today with fingerprints if one person out of every 12 has the same fingerprint? I have no objection to the .8, if it is permitted to obtain the .8 by the breath.

I have taken Dr. Harger's 121 cases and amongst them, gentlemen, 11 showed blood less than .8. Of these 11, 5 showed not .8, but .9, 1.2, 1.2, 1.4, 1.4. In other words, according to the blood tests, these people would not even have been charged. According to the breath test of all five of these eleven would have been convicted.

Incidentally, gentlemen, there is another point here. Probably it is presumption on my part being merely a doctor and not a lawyer, but I do not think that the bill is clearly stated. If you look in one part of the bill it says that you can be charged when you have .8 in the blood. On the opposite page, in the explanatory note, it says more than .8. Now, which is it? To me, that is not precise. I may be wrong. It makes a big difference if I am not allowed to exceed 30 miles an hour with my car or to exceed 29 miles an hour with my car. You see on one side it says .8 and on the explanatory note—

The CHAIRMAN: Do you want to answer that, Mr. Mather?

Mr. MATHER: The proposed change in the Code specifies a level of .08 per cent as being evidence of the ability of the said person impaired. The explanatory note as the doctor points out says "more than .8 per cent". I see no error involved in it. The basic point is the level of .08 per cent. Actually if you have more than .08 per cent you would still be—

Mr. RABINOWITCH: Oh, you would not be convicted on .8?

Mr. MATHER: Yes, you would. That is just what I am saying. If you have more than .8 you would—

Mr. RABINOWITCH: Oh, naturally you would be convicted.

Mr. MATHER: All right.

Mr. RABINOWITCH: So .8 is the conviction point.

Mr. MATHER: Right.

Mr. RABINOWITCH: Before we go any further, gentlemen, I have no objection to the .8. For many years, I have been trying to get it down to .4, because although I have seen persons in no way impaired with twice .8 and three times .8, I have seen quite a lot of people impaired with .8. For many years I have been trying to get this level down to .4 and to .5. I suggested it, I recall, at a murder trial, and suggested that to Dr. Ward Smith in Sudbury, many years ago. Although I have always wanted to see that level made a statutory offence beyond that as impairment you are going to have the battles all over again between medical and legal experts. I get up and say well I have seen people with twice that much and they were not impaired. Then one man gets up and he is on the other side, and he says he has seen people and they are impaired.

I am talking as a doctor now, and you will have to make allowances for my shortcomings, but the way I see it is this—and I have been saying this to judges and to magistrates and to lawyers for 25 years: The Queen says to me that I can walk on any street in Ottawa as much as I like, providing I do not make a nuisance of myself; but she also says to me that I am not to walk on any street with a loaded pistol in my pocket. Why not, in the legislation, make it a statutory offence to have that much alcohol in your blood? Do not bring in the point of whether it is impairment or not. Make it a statutory offence and then there is no problem; because this is not going to solve the problem of medical-legal experts. They are going to have battles all over again.

Mr. MATHER: Mr. Chairman, I would like to comment on that point.

As the committee members will recall, we had testimony the other day from the Canadian Bar Association, and they made that very suggestion. What we have here is the subject matter of my bill, and I, for one, would gladly accept your proposition, or that of the Bar Association, which I think is very much the same thing.

Mr. RABINOWITCH: Getting back now, gentlemen, here we have 5 out of 11 of Dr. Harger's own data—not data obtained by some police officer who has had a short course in operating a breath test machine, but Dr. Harger himself—of 11 people who had .8 per cent or less in the blood—I am sorry, less than .8; I did not know what that .8 meant—who had less than .8 in the blood had .9, 1.2, 1.2, 1.4 and 1.4. Again, gentlemen, if you take all of those 11 cases and average them

there is a remarkable agreement between breath and the blood. But, again, we are not concerned with statistics.

We start off with Dr. Harger's drunkometer. In 1950, Dr. Harger, for some reason or other, was not satisfied with his original method. He therefore decided to try to improve it, with the end result being exactly what it was then. I now quote from Dr. Harger's second paper, and I have it here before me if you gentlemen wish to see it. Here we have 49 experiments—49 subjects—showing less than .8 parts per thousand in the breath. Of these 49, gentlemen, 13 showed more than .8 parts per thousand. In fact, some of them showed more than 1 part per thousand; so he did not get very much improvement. Therefore, we are through with his first two drunkometers.

Then we come to a remarkable experience in 1956. Dr. Harger now succeeds in modifying his drunkometer. Between 1938 and 1956 eighteen years have elapsed, and all people in the United States with a statutory level of 1.5 have been convicted. In 1956, Dr. Harger finally succeeds in getting this modification. To show how he improves it, he now admits large errors—and those are his own words; I am quoting verbatim—"large errors" in 20 per cent, with his own drunkometer. Where is your constant ratio now of 2100 to 1. Then he is not satisfied and he now compares his new method with the intoximeter. With the intoximeter he gets large errors in 14 per cent. Then he compares his new method with the alcometers, and he gets 8 per cent. The article is right here if any gentleman wishes to read it.

He claims now only a 2 per cent error with his new machine. We shall come back to that 2 per cent. Now Dr. Harger has entirely changed his views. He talks no more about a constant ratio. He talks of the average. He is now using the word "average". I wrote Dr. Harger to ask him what he thought of the 20 per cent convictions with the drunkometer, with the alcometer and with the other. I never did get a reply to that letter.

We have now reached the stage where we have a better method, a more accurate method, of doing breath tests—and let us forget the 2 percent for the time being. It is undoubtedly a better method. We have now reached the stage where Dr. Harger himself admits that from 8 to 20 per cent large errors—"large" is his own word—with the other tests.

Shortly after that the Medical Research Council of Great Britain decided that they would see what the story was about these breath tests. They decided to test the drunkometer. Gentlemen, here is what they found. They found many other things, but we are only interested in this bill, and therefore, interested in this .8 figure. They did hundreds of tests, but amongst them 37 subjects showed less than .8 parts per thousand. Of those 37, 9, with the breath tests, showed much more than .8 parts per thousand. I do not think that I am in the habit of exaggerating—you certainly should not when you give scientific evidence—but, gentlemen, the reason I use the words "much more" is this, and here is the figures: In one case .59 parts per thousand—well below the point 8; with the breath test, 1.6 parts per thousand. Another case: .76 parts per thousand in the blood; 1.08 parts per thousand. Another case: .61 in the blood; 1.63 parts per thousand—more than twice the amount you need for conviction. Anyhow, to make a long story short, nine out of 37, one out of four, broke down in the Medical Research Council figures.

Dr. Harger is not yet satisfied. He is trying to go after something more accurate. In 1960 something occurred to him. It had been known for a long time—20 years before that—that when you give a person a drink of alcohol the alcohol level in the arteries will for a short time, be much higher than the alcohol level in the veins. I stress that point because the bill specifically mentions “vein”. You are going to convict the man on .8 in the blood in the vein, not the .8 in the blood in the artery.

We wanted to see what would happen if we gave persons alcohol, determined the alcohol level in arteries and in the veins. In a letter to me—I have the letter here—in 1964 he gave me his figures. He noted that up to half an hour after the ingestion of alcohol there may be as much as two and a half times as much in the arteries as there is in the veins. Forty-five minutes after ingestion of alcohol there may be 1.6 parts higher in the arteries than in the veins. An hour afterwards there may be 1.4 parts higher in the arteries than in the veins. Being, in a sense, laymen you might miss that point, and you might well ask the question: What do arteries and veins have to do with the blood test? It has this to do with it gentlemen. The level of alcohol in the lung air is determined by the level of the alcohol in the arteries, and not that in the veins. Now we are adding cabbages and cows and drawing conclusions from the results. You are going to convict the man on vein-alcohol and yet your test is reflecting artery-alcohol.

I am going to give you the actual figures from Dr. Harger. You give a man a drink of alcohol, and here is the .8 parts per thousand. It is roughly about .9 and then back to .8 and it is coming down. Now let us test the blood in the arteries. For the first hour there is much more in the arteries than there is in the veins, which means there is much more in the breath than there is in the veins. Your legislation is based upon the breath. Shortly afterwards, once the alcohol has reached the peak, and is now disappearing from the body, then the time comes when there will be less in the arteries than in the veins, and now your breath test will show a little bit less than in the blood. In other words, we are back to where we were at the beginning. Here is a perfect place to do a breath test. But for the breath test to apply medico-legally after you arrest a man you say to him: “When did you last have your drink. Has all the alcohol left your stomach. Has it reached the peak in the blood, and is it not on its way down? Because only now can we rely on the breath test”. Now, that is Dr. Harger’s own data. We will be coming to that shortly.

The reason, gentlemen, that we do not do arteries is because it is a very dangerous procedure. It is not practical. I did a lot of arterial punctures many years ago and I have two publications on it here, one from the British Journal of Experimental Pathology in 1927, and I have another one for the year 1928. We then learned that you cannot tamper with arteries to take the blood from the arteries in the wrist. Therefore, for practical purposes we have to use the vein. But if you are going to use the vein, and since, for quite awhile—at least for an hour—there is more in the arteries than there is in the veins, and since the breath is determined by the arteries and not by the veins, you are going to convict the man on artery and yet you are doing a vein test.

This now brings us to the breathalyzer which is our main concern now, I think, because although the bill does not specify any special breath test I think we will find that more and more breathalyzers will be used. Again, I cannot stress

too much that I have perfect confidence in the breathalyzer as a machine to determine alcohol in air. Where it breaks down is in the human being.

I want to quote to you claims for the breathalyzer, first by the man who invented the breathalyzer—Borkenstein. "Continuing experience has convinced the author that the breathalyzer reading will not be more than 0.1 per cent higher than the concentration in venous blood".

This is repeated in a police journal: "A remarkably high level of accuracy and consistency when checked against other breath methods."

Dr. Harger, who still likes his own drunkometer, is satisfied that the breathalyzer gives excellent results.

The Texas Department of Public Safety published their figures. They say: "The breathalyzer agrees in accuracy with the alcometer."

Dr. Wallace—we are not concerned with him. He is not a doctor.

I want to quote you verbatim what Dr. Ward Smith had to say about the accuracy of the breathalyzer: "The author has used it in upwards of 1,000 analyses in which readings from the breath were compared with readings from a saliva, urine and blood sample taken at the same time. In all "—I stress that "all"—"—in all cases the breathalyzer has been shown to be accurate within plus minus .1 per cent." That was published in the police journal for law enforcement officers and then it was repeated for lawyers in *The Criminal Law Quarterly*, making practically the same statement. The statement there is actually this: "Continuing experience with equipment have convinced the authors that the breathalyzer reading will not be more than 0.01 per cent higher than it should be except under certain extreme conditions." Again, gentlemen, we are dealing with a conclusion. We have not yet seen the authors' data.

The question therefore is: What do the data actually show? First of all, we have the data from the Texas Department of Public Safety. A statement is made here that the breathalyzer is as accurate as the alcometer. The question, therefore, is: How accurate is the alcometer? He did 36 comparisons between alcometer and blood. Of these 36 comparisons the blood showed less than .8 parts per thousand, and, of seven, five of them in the breath test showed more than .8 parts per thousand. If the breathalyzer is no more accurate than the alcometer, then here is your alcometer.

Here are more results of the alcometer. I have some here showing the relationship between blood and breath and again we see a large percentage of people having more in the breath, than they actually had in the blood. Therefore, if the alcometer has only that accuracy, and if the breathalyzer agrees in accuracy with the alcometer, clearly the breathalyzer itself has to break down; therefore, let us see actually exactly what the Department of Public Safety did find with their breathalyzer and here is what they found. They did not find a difference as Dr. Ward Smith said of no more than .1 parts per thousand, but in 34 experiments, they found a difference as much as .4 parts per thousand, .2, .3 and .4. Here is a complete contradiction, by their own data; their data does not agree with their conclusion or vice versa, if you like. Statistically, there is no question about it. The most remarkable agreement, when you average the whole 34 cases, breaths and blood agree almost perfectly. As I said before, we are not concerned with statistics, but with the man on trial.

We now come to the Medical Research Council of Great Britain. Let us see what they found with the breathalyzer. Here is what the Medical Research Council of Great Britain found and I will gladly leave this with you, if you would like to read some of it. In their investigation, the Medical Research Council of Great Britain conducted 59 experiments, 12 of which we are not concerned with in this Committee, because they are all higher than .8, but we want the figures below .8. Of these 59, 12 of them were above .8; therefore, our concern is only with 47. Of these 11 of the 47 or roughly 1 in 4, showed much higher in the breath than in the blood. In other words, you are back to where you were with the original drunkometer in 1938. Again, there was beautiful agreement statistically between the breath and the blood, which, seeing that we are all Canadians, brings us to the most important publication on the breathalyzer. I am now referring to the R.C.M.P. report on impaired driving tests.

As you probably all know, this investigation was used very widely in courts of law; in fact I had it thrown at me not so long ago, although the counsel regretted having thrown it at me. When I got this report, I knew no more about it than you gentlemen did before you heard about it. In glancing through it, I became suspicious of it for a number of reasons. First of all, in these experiments, these people are supposed to have received a definite amount of alcohol according to their body weight. Here is what I found out: Body weight 212 pounds, 8 ounces; body weight 162 pounds, 8 ounces; body weight 162 pounds, 8 ounces; body weight 167 pounds, 6½ ounces. They just did not agree.

There were 50 subjects and I found inconsistencies in 9 out of the 50. That is the first thing that made me suspicious. The next thing that made me suspicious was the way these statements that these people had all received a similar kind and quantity of food. As you probably know, because you had evidence before you here, the effects of food can be very marked on the rate in which alcohol is absorbed in the stomach, so it is important to know exactly what these people did find out in their driving experiments. The statement was made, and I quote verbatim from page 16:

The kind and quantity of food consumed was similar in all subjects.

From some of the figures I saw, I just could not believe it was similar in all subjects. It is contrary to human physiology that you get these figures. I wrote to Dr. B. B. Caldwell, who is the editor of this publication—he is here in Ottawa with the R.C.M.P. laboratory—and what Dr. Caldwell told me—and I have Dr. Caldwell's letter here with me—was that they did not receive the same; the same was made available to all of them, but they did not all eat the same amount of food. You can give me bacon and eggs for breakfast, but if I eat only one egg instead of two and do not eat the bacon at all, or if I eat one roll and do not eat the other roll, there is going to be a marked difference on the rate in which the alcohol will pass from my stomach into the blood. That made me suspicious. Then another thing that made me suspicious was of all the 50 subjects who had low levels of alcohol of .8 there was not a single case of improvement. Gentlemen, it has been known for close to 50 years—and I have literature of one type or another to show—that an appreciable number of people show actually improvement—you would not say this in public—instead of impairment of the mental faculties when the level of alcohol is at a low level in the blood. In fact, one of the persons in Toronto, Carol Vogel, of the alcohol foundation, was the

one who reported improvement, she just measured muscular co-ordination and I think she measured vision. At any rate, it is a well known fact that at low levels of alcohol, a small percentage of people show improvement, not impairment. Therefore, another reason that made me suspicious was that they showed no cases of improvement.

As a result of that, I investigated this book very carefully, paid no more attention to the conclusions and here were my findings. I have read every page in this book, not once, but many times and here is what they show. They do not show in upwards of a thousand cases, an error of only .1 parts per thousand, but they show roughly that in one in six persons there was a difference of more than .1 parts per thousand. There were difference of .3 parts per thousand and there were also differences of .4 parts per thousand. That shows—and I hope I will not be misinterpreted, Dr. Ward Smith is a man of the highest integrity here in Canada. He is a great authority in his own particular field, but this is just something you very commonly see in scientific literature—that the conclusion does not agree with the data.

We come now to conclusions from this, and you need not be any authority on alcohol to appreciate these conclusions. In this publication is shown rates at which alcohol disappears from the body, the numbers of parts per thousand. On the average, the alcohol disappears from the body at the rate of about .15 parts per thousand per hour, but it may be less than that, and it may be as high as .2 or .25 parts per thousand. The average is .15. Gentlemen, 3 parts per thousand is absolutely impossible, because .3 parts per thousand would mean that a man could drink a quart of whisky every day and have no alcohol in his blood the next morning. That is exactly what it means. A simple calculation will show that at .3 parts per thousand a person weighing 150 pounds, will eliminate from his body roughly 30 grams of alcohol, which is 40 ounces of whisky, because whisky is about 40 per cent alcohol. That is what .3 would show and it is absolutely impossible. This report does not show .3. The breath tests here show .6 parts per thousand, .7 and close to .8. In other words, according to some of these breath tests in this report a man can consume a gallon of whisky a day and have no alcohol in his blood the next morning, which is absolutely fantastic and it is ridiculous. But that is what the breath tests show.

We can, knowing the person's body weight, knowing the rate of elimination—that is, parts per thousand—express our results in grams per hour. On the average—if we took the average of everyone in this room—we eliminate about 7 grams of alcohol per hour. We could eliminate 10; we might eliminate 15 but no human being has ever eliminated 20 and certainly never 25 or 30.

What do the breath tests here show? Gentlemen, they show eliminations of 30 grams a day, 40 grams a day, 50 grams a day, 60, 70, 80, 90, 100, 110 and 120. It is absolutely fantastic. You can either accept these figures or reject the breathalyzer. You have no alternative on strictly scientific grounds.

Apropos of this, there was a case of criminal negligence before the Honourable Mr. Justice King of the Supreme Court of Ontario, in Windsor a year or so ago. The experts for the crown were perfectly happy with the breathalyzer test; everything was conducted exactly as it should have been; there was no question about the reliability of this test. This thing went on for some time and the first question Mr. Justice King put to me was this:—I meant the lawyer from London.

I forget his name. It does not matter. The case was before Mr. Justice Maurice King. The first question counsel put to me—mind you gentlemen I did not expect that answer to come so quickly. I knew that question was coming but I thought it was going to come much later in the trial but from what I had told counsel he put this question to me as the first question. "I have heard what these experts have to say, what is your view?" I turned around to his Lordship and I said: "My Lord, the figures here show that this man has eliminated, during this particular period, so many grams", I have forgotten but I think it was 22 or 23, "of alcohol in an hour, which my Lord, it is absolutely impossible for a human being to do." I went on to say that I felt so strongly about it and said a witness should certainly not be dogmatic because it tends to question his credibility, but that if the crown would show me in any publication in any part of the world on alcohol that a person had eliminated the amount of alcohol in an hour which the crown claims this person had eliminated in this event, I would have to apologize to the court for being here. I would have come here not to help the court, I would have come here to mislead them. That is all that happened.

There was a silence almost like a Perry Mason silence. Mr. Justice King turned to the crown prosecutor and asked if he wished to cross-examine the witness. The prosecutor replied: "No, sir." That was it. Then he came back and said he had just one question. He wanted to know how many breathalizers there were in the United States. I told him I did not know. So that was that part.

Now we are through with the grams per hour, but gentlemen, and here is where human metabolism comes into the picture—I will not keep you very long now. The reason I gave you the history about the diabetes was to let you know that alcohol is a food to the extent of 7 calories per gram. Now, the law of conservation of energy, as you all know from your lectures in physics at school, tells you that energy cannot come from nowhere. Wherever energy is active it must have been potential elsewhere. Therefore, you cannot do any work of any kind without expending calories.

Many years ago, for different reasons, we had to determine the amount of calories a person consumes with a given occupation, per hour and per body weight: for example, sleeping. You saw that machine which I passed around where you put the man right in the machine when he is sleeping. If you are sitting or standing or engaged in different occupations, sawing wood, swimming, walking so many miles per hour, running so many miles per hour, we now know with a high degree of accuracy exactly how many calories you need for a particular type of occupation. For example, I could tell you pretty well how many calories this gentleman here on my left used when he lifted up his hand to put the cigarette to his mouth. He could not do that without expending energy from the muscles of his arm and that means calories.

Now, since we know that, gentlemen, and I have all the data to prove beyond all doubt, you will either accept this or you will reject it. If you accept the breathalizer here is what you must believe. A man sitting in a motor car—that is what these people were doing—doing nothing else but driving the car with a little bit of muscle—the muscle he had to use to move his arms and legs—that man sitting for one hour—I have the exact figures here; there were 5 subjects; they were sitting for one hour doing nothing but driving the cars—

you believe the breathalyzer tests, not my breathalyzer test but these breathalyzer tests done right here in Ottawa, here is what you also have to believe. A man sitting for one hour in a motor car doing nothing else but driving that car is working as hard as a man who is running 5.7 miles in one hour. He is working as hard as a man who is swimming for one solid hour. He is working as hard as a man who is sawing wood for one solid hour. Now, you can believe that or you reject the breathalyzers.

To sum it up, gentlemen, what I have done, and I have the figures with me here, is that I have collected from the literature purposely for this Bill No. C-87, all of the cases I was able to find where breath and blood were compared and where both tests were done simultaneously and where without a single exception there were no technicians involved. These tests were done by very competent men, by the best biochemists in England and the United States and by the best men in Canada and, in fact, I have forgotten what page it is shown on, these tests, the chemical analyses and the breath analyses, were done by Dr. Ward Smith and by Dr. Professor Joslyn Johnson Rogers. On page 5 there is the statement that Dr. Smith and Professor Rogers helped in planning the experiments, participated in the conduct of the work, especially in providing and in operating the breathalyzers and helping with the chemical analyses. Here there were no technicians doing any work, here were the top notch men doing work. That, gentlemen, also applies to the men whose data I have taken from the United States and the men whose data I have taken from England and the men whose data I have taken from Canada. They are all top notch men. I was able to collect 373 cases where the blood contained less than .8 parts per thousand. Gentlemen, of these 373 cases—and incidentally I have the exact reference to the literature of every case which you may want to question—where the blood test showed less than .8 parts per thousand, every one of the 55, one in seven, would have been convicted by this bill, roughly one out of seven.

That is really all I have to say, gentlemen, except for one thing: one out of seven. The only thing I have to say is this, certainly you did not bring me here to preach a sermon; furthermore, I am not competent to preach a sermon, but religion, gentlemen, does govern all our lives, more or less. If you will look up the 16th Chapter of Deuteronomy, Verse 20, it says: "Justice, justice shalt thou pursue." The only place in the whole of the Old and New Testaments where there is a repetition. Twenty-four hundred years ago, when the great rabbis of that period asked this question: "Why the repetition of the word justice?" The answer was this: "It applies to two different things. The first justice applies to that which you must pursue; the second applies to the method by which you must pursue it." It teaches that one must not use unjust methods to arrive at justice. That is all I have to say.

Gentlemen, I am open to any questions. You can question me by the hour; I have not made a single statement which I cannot support by published data; I have not in any way used any of my own data, although I have done breath analyses long before there was a traffic problem.

The CHAIRMAN: I have just one suggestion I would like to make to Dr. Rabinowitch. This demonstration you put on the blackboard will not appear in the proceedings. Can you make a graph for us before you leave today?

Mr. RABINOWITCH: Yes, sir, I will be very glad to do so. I have Dr. Harger's data for that for which I am very glad.

The CHAIRMAN: The other thing is these booklets to which you referred. Quite usually we make them exhibits, but I think these are really personal property and once they become exhibits you would never get them back again.

Mr. RABINOWITCH: Well, gentlemen, that is my problem. I have lost more valuable literature through the years and I do not believe it is an exaggeration to say that I have pretty well about 95 per cent of the world's literature on alcohol. I have over 20,000 reprints on alcohol and every time I have lost one—you can lend a man \$1,000 but you cannot lend him a book and never lend a lawyer a publication because you will never get it back. However, gentlemen, this is the last time I am going to talk about breath, because I am tired of it and, therefore, I am prepared to leave these here with the hope that care will be taken of them.

The CHAIRMAN: They will be taken care of but I doubt whether they will ever get back into your possession.

Mr. RABINOWITCH: I am sorry, then. I am retired; my time is my own and it does not cost the government anything to keep me here except to pay for my meals. I would suggest that any particular article which the gentlemen may want—I have to stay in Ottawa for train connections anyhow—I will stay in Ottawa all day today and all day tomorrow and give you an opportunity to make photostatic copies of anything of interest. You do not have to use the whole article, just use certain parts of it. I will leave them with you, Mr. Chairman, to make photostatic copies of any parts you may want. If you do not mind, I would like to pick them up before I leave. I have to leave early tomorrow about 8.30.

The CHAIRMAN: I will see Mr. Guay, Mr. Tolmie and Mr. Mather, in that order.

(Translation)

Mr. GUAY: Dr. Rabinowitch, you said at the outset of your remarks a while ago that you are one of the only ones to oppose this breathalyzer test. Why are you alone in opposing this test, or at least one of the very few?

(English)

Mr. RABINOWITCH: I wanted to bring out the point, sir, that there are very few men holding highly responsible positions, all highly respected men, no question about their integrity, all highly expert in their respective fields but they are not authorities on human metabolism. For example, a man may be a top notch doctor, a very good doctor; there are no personalities involved here, this is a scientific investigation. Take a man like Penner out west, a top notch man; you cannot argue with that man at all but the man is a pathologist. At best he is a pathologist and pathology is one branch only of the necessary knowledge for human metabolism.

The only person I know of in Canada is this man Cantor out west. I have before me here a letter from the Chief Justice of the Supreme Court of Alberta and he very kindly sent me a photostatic copy of this trial where the breathalyzer was turned down—the case went to appeal—for one reason because Dr. Max Cantor brought out to the satisfaction of His Lordship, and he specifically brings out that point that he is quite satisfied with Dr. Max Cantor's evidence, that although the average is 2000 to 1, it could be 1300 to 1, and what we are concerned with here is the man and not the average. I have the case here and if you wish, gentlemen, I will leave this transcript behind. It was the case of the Attorney General of the Province of Alberta versus Joseph Crack, judgment

before His Honour Judge J. S. Cormack. He was from the judicial District Court of Northern Alberta. Would you like me to leave this with you?

(Translation)

Mr. GUAY: At this point I would ask you this. You have rejected the validity of the breathalyzer test on statistical or scientific evidence. What I would like to know is what you would prefer, what you would propose, positively, to establish evidence before the courts?

(English)

Mr. RABINOWITCH: I would propose, sir, a blood test. Parliament can do anything. They can make laws and they can break laws and although it is an infringement on the person's rights, and so on, if you like, but we are dealing with a serious matter here. People are being killed on the highways every day of the week and you have to do something. Parliament says you can vaccinate a person for smallpox whether he wants to be vaccinated or not. Is that not compulsory.

The CHAIRMAN: I do not think it is compulsory unless you go out of the country.

Mr. RABINOWITCH: I do not see why the blood test is, but, gentlemen, although I approve of the blood tests and approve of them heartily, I approve of much less than .8; I would like to see .4 instead of .8. I would like to be certain there is better control in our laboratories in Canada on chemical blood tests.

There have recently been some very disturbing experiences. They are of a confidential nature, according to a letter I received from Dr. Ward Smith, but you might, if Dr. Ward Smith has not yet testified, tell him that I mentioned that there has been recently—I think two years ago—some disturbing experiences where they sent the same blood to five or six different laboratories and received five or six different results. Incidentally—this should encourage us—these accidents did not occur in our large laboratories; they occurred in smaller communities where they took the sample of blood and gave it to the doctor and God knows what happened to it from the time he took it until the time the laboratory received it. But even Dr. Ward Smith admits that one out of seven of his own experiences was a disturbing one until he corrected it. Let me say again, gentlemen, Dr. Ward Smith has a very excellent technique for chemical analysis of the blood—an excellent technique.

I would prefer the blood, not the urine and certainly not the saliva. That is completely out. Everything hinges on the blood; you are doing the breath test to determine what is in the blood; you are doing the saliva test to determine what is in the blood. I would like to see the blood test and I personally would like to see it made compulsory.

I have often discussed this with judges and also with Mr. Hazen Hansard when he was still president of the Canadian Bar Association.

Mr. RYAN: Dr. Rabinowitch, would you take arterial or venous blood?

Mr. RABINOWITCH: You cannot take arterial, that is a dangerous procedure.

No, you cannot do arterial. That is out. It has to be venous, and the mere fact that it has to be venous throws out the breath test. I do not care if the breathalyzer or what it is because the breath test for a good one hour after-

wards is showing much higher values than the vein; the artery is higher than the vein and the breath depends upon the artery, not upon the vein. So much so that later on when the breath is falling, in due time—as a matter of fact I will put it this way—since most people have their blood taken, say, one hour after they have had their drink, there would be a tendency for the breathalyzer test to show less than the blood which would favour the accused because down here the artery begins to show less than the vein.

(Translation)

Mr. GUAY: Still, you said there was a chance of error in every case, but there is a 20 per cent margin of error in the blood test. How can you believe that if you want to pass legislation equally applicable to all citizens throughout this country, it is possible to organize a blood test to be administered so as to reduce the margin of error as much as possible when we are remote from any hospital, medical centre or other properly equipped location? How can this be applied throughout the country? How can we make such a blood test mandatory? Would it not be easier to go by the breathalyzer test?

(English)

Mr. RABINOWITCH: A breathalyzer test would come in handy if you could rely upon it. If you are perfectly content to convict one innocent person out of twelve, use the breath test.

I will admit that there is no question that in a lot of places in Canada they cannot do the blood alcohol test properly. But there are methods today, gentlemen—very simple methods—of preserving a blood and doing the test two or three days, or a week later. This is a simple method today that takes exactly ten seconds to add something to that tube, cork it up tightly, and it will preserve that blood at least a week or ten days. So that blood could be taken from a place where there are no facilities available to Toronto or Montreal to one of the big laboratories. There is no problem there. Of course, there would be a delay in bringing up the case for trial, and so on.

I just cannot see the breathalyzer. I cannot see it because of the patently immoral principle—the end justifies the means; that is what you are doing. That is what we are saying here. If one person out of ten, and I have shown one out of four and one out of five, as a matter of fact, I have shown one group of case here with five out of seven, which is roughly 70 per cent. I cannot accept that as a legal proof—put it this way—legal proof, morally.

There is no question that we have a big problem before us in traffic accidents, but you are going to make the end justify the means, which is patently immoral. I think we overcome your problem, sir, by using the very simple means of preserving the blood and they can do the test a week or ten days later. It will postpone the trial for ten days or two weeks.

Lawyers are always postponing trials anyhow. I have one that has been going on for three years now.

(Translation)

Mr. GUAY: But it is not the analysis of the blood, it is the actual taking of the sample of blood which presents difficulties. How can we take a blood sample from a person who is arrested? It is not always easy. In other words a percentage of the people could not be reached in this way?

(English)

Mr. RABINOWITCH: That cannot be very large. If it is a small percentage, well, go by the clinical signs.

I cannot agree on anything that is an immoral principle. To me it is immoral, and I would rather see a guilty man go free than use an immoral method. It is immoral, and I cannot use a stronger word, and I know that by using these strong words I am giving you every opportunity to question my credibility. But it is immoral, gentlemen. We are using a means to justify an end. If the means is not just—

Mr. RYAN: Mr. Chairman, on this point, may I ask a supplementary question? I understood from your evidence, doctor, that the widest present error would be about four parts. If this were the case and in view of the fact that you think .04 itself ought to be the basis, surely, then, if we put in a figure of one part per thousand we would be allowing for all possible errors, and it would make sense then to have the breathalyzer test.

Mr. RABINOWITCH: I think, sir, that I have quoted cases, and one in particular, of .61 with the blood and 1.59 with the breath, and I think I quoted a .6 in one and 1.63 in the breath. That is a .9 difference, not a .4 difference.

Mr. RYAN: But these were far out cases, were they not?

Mr. RABINOWITCH: Some were far out, yes.

Mr. RYAN: Then, .04 would cover how many cases of error as a percentage?

Mr. RABINOWITCH: I think a .4 would cover about 90 per cent.

Mr. RYAN: Breath?

Mr. RABINOWITCH: Yes. Personally, I do not like it, and I cannot compromise. But I must admit that .4 would cover about 90 per cent of the people.

Mr. RYAN: Thank you.

(Translation)

Mr. GUAY: One last question. Could we contradict the blood test before the purts? Could we enter contrary evidence?

(English)

Mr. RABINOWITCH: If the test is done in a laboratory where there is no question of reliability—if it is done here in Ottawa, or Toronto, or Montreal—I do not see how any honest and sincere scientist will contest, but I must say that I have to underline the words "honest and sincere".

I had a very sad experience recently of out and out perjury on both sides in one of our courts before the hon. Mr. Justice Grant. I should never have been in the case at all, had I not been completely misled by the lawyer who was a witness in the case—he was fighting the case, he was a witness in the case. He was on one side. The other one I do not mind quoting. The chief medical examiner for the city of New York deliberately lied before the court, deliberately, because he told the court exactly the opposite of what he told me when I went down to New York to investigate the case. He gave me all the facts and we came before the case and I said: "Here is Dr. C—what the hell is he doing here?" The doctor gave evidence completely contrary to what he gave me. So here we have a case of perjury on both sides.

Then I have a case in Saskatchewan, I do not see why the judge, Mr. Justice Bence, the Chief Justice of Saskatchewan, did not order his arrest right from the bench. The man was just an out and out liar. As I said, the crown prosecutor fired him that same day, and the R.C.M.P. fired him the next day.

But those are rare, sir. I do not think that an honest and sincere medical expert would get up and contest the accuracy of Dr. Ward Smith's analysis or Dr. Penner's analysis, or any other qualified doctor's analysis.

(Translation)

Mr. GUAY: Why can we contradict the breathalyzer test in that case whereas some doctors, as you say appear to favour it. Indeed you yourself seem to give it some validity. We could not contradict the blood test then?

(English)

Mr. RABINOWITCH: The blood tests are contradicting a piece of chemical evidence. This is metabolism and these men, gentlemen, are simply not authorities on human metabolism. They are authorities on particular branches of human metabolism. They are biochemists, or pharmacologists or physiologists.

I did not want to bring in my own experiences, I preferred not to, but I want to show you gentlemen the difference between my work and police work—I am out of the picture now—but when I was doing my work before I retired, these people who drank this alcohol did not come to me for alcohol; they came to me to check their diabetes, and they would not lie to me and tell me they only had a bottle of beer when they had ten quarts of whisky, or whatever it was.

Now, I got their history. You see in police work a policeman sees a man. Another man takes the blood. Another man does the analysis, and another man does the interpretation. In my experience, gentlemen, this was the situation. I saw the man. He had to tell me what he did in the last three days, alcohol and so on. I examined that man, not cursorily, but from head to feet. It was part of his consultation. So I see the man; I examine him myself; I take the blood myself and I do the test myself. I did not want to mention this at all, but I would prefer that you rely upon all of this rather than upon my evidence. And that is the reason I said I did not want any opinions, either. I do not want you to accept any opinion that I give any more than I would accept their opinions. I want facts, and I am giving you nothing but facts, incontestable facts.

You have to accept this, or you have to say a man sitting in a car for one hour is working as hard as a man who is swimming for one hour. Now gentlemen, none of these experts whom you may call here know about this swimming and this sawing wood. I brought this here purposely as an example. All that I did was to apply my knowledge of human metabolism and I took the grams of alcohol and converted them into calories and used my data of the known relationship between work done and calories consumed.

Mr. TOLMIE: Doctor, I believe in your evidence you stated that you would be in favour of incorporating a law whereby a man who was driving with .8 per cent or .4 per cent of alcohol in his blood should be guilty of an offence. You seemed to indicate that a breathalyzer test would not give a true indication of the actual alcohol in the blood.

Mr. RABINOWITCH: That is correct.

Mr. TOLMIE: To allow for this latitude—and one of the members of the Committee alluded to this point—or this error, as you allege, would you be willing to favour such an amendment whereby a man could be convicted of a driving offence if a breathalyzer test showed he had .15 per cent alcohol in his blood?

Mr. RABINOWITCH: As long as we understand that what we are aiming at is .4.

Mr. TOLMIE: In other words, you would accept the breathalyzer test if you made it so high that any margin of error—

Mr. RABINOWITCH: Exactly.

Mr. TOLMIE: This to me is an important concession.

Mr. RABINOWITCH: The only thing is this, sir: if you make it 1.5 you are going to miss all these people. I do not think you are going to solve the traffic problem.

Mr. TOLMIE: It may not be 1.5 but a higher limit, and that would have to be determined. I do not think any member of this Committee is qualified to attack your scientific evidence and your medical background, and I think we can only speak from conclusions we have arrived at in our own experience as laymen, but I think, in a sense, that the proof of the pudding is in the eating. The breathalyzer test had been used in many jurisdictions, especially Sweden, and the result achieved has been good, it has been beneficial to many, many people in the sense that the rate of accidents has decreased. Now, you mentioned in your evidence your great adherence to justice. Assume for a moment that there is some measure of injustice. Is it not preferable to use a device which has actually curtailed accidents and helped many, many people than forego it on the possibility there is some inaccuracy? This is a matter of philosophy and I know you do not agree with that assertion, but I think this is something that really has to be evaluated.

Mr. RABINOWITCH: In effect what you are saying is this: you are all my patients and in my opinion you require a certain type of treatment. You want me to prescribe that treatment, knowing perfectly well that I will kill two out of the twelve present here, and I cannot do it.

Mr. TOLMIE: I think that is an exaggeration. In the first place, it is not a question of being killed; it is a question of the greatest good for the greatest number. Again, this is something I do not think you will agree to.

I have one further question. What about the validity of the urine test?

Mr. RABINOWITCH: The urine test is certainly much more satisfactory than the blood test, if certain precautions are taken. These precautions are quite often not taken even in the best laboratories, and I want to cite a case which was heard before the Honourable Mr. Justice Judson of the Supreme Court of Canada. I happened to be involved in that case and I do not want to mention the names of the other people, but they were all from the Attorney General's department of Ontario. In this case there was a breathalyzer test and a urine test. A urine test is the most dangerous test there is unless you get the person to pass his water, throw it away, get another sample half an hour later and take the sample between the two. There is a pamphlet issued by the Ontario Attorney General's department warning the police officials that they must take the two samples.

You can do what you like with the first one, you can keep it purely as a matter of curiosity, or whatever you like, but the bladder must be empty and then half an hour later take the other sample. In this particular case that was not done. Not only that, but the urine showed 1.8 parts per thousand and the breath showed 2.1 parts per thousand. After this particular witness had said that in his experience there is no such thing as an error higher than .1 parts per thousand, in his own laboratory the urine showed 1.8 and the breath showed 2.1 parts per thousand. Firstly, there was a discrepancy between the two and, secondly, the urine was not collected properly. I would prefer the urine test. I think a urine test done under proper conditions is a reliable test.

Mr. TOLMIE: What you are saying in effect is if the urine test could be perfected, and sent with the actual execution of the test itself, it would be the best test and perhaps this is the way we should be doing it instead of the blood test, which is so inconvenient and difficult to achieve. We need to improve the method of doing the test. The test itself is good.

Mr. RABINOWITCH: It is not as good as a blood test, but it is good. Let me put it this way: if there is a legal objection to a compulsory blood test, certainly I would prefer the urine test done under proper conditions.

Mr. TOLMIE: You would prefer it to the breathalyzer test?

Mr. RABINOWITCH: There is no comparison. Gentlemen, this book itself shows the superiority of the urine test over the breathalyzer test. If the authors of this work would only analyze their own data instead of drawing conclusions they would find that the urine test by far exceeds the accuracy of the breath test. This is their own publication.

Mr. MATHER: Mr. Chairman, I think all members of the Committee would agree that the doctor has presented his point of view in a very striking fashion. The fact that I am the sponsor of this particular bill, or subject matter, which is before us does not hinder me from admiring his presentation. However, I have three or four questions I would like to ask.

In the first place, the doctor has very frankly said that he is almost alone in his position on this. He is therefore aware that the Canadian, British and American Medical Associations, all of whom have done a great deal of research presumably, favour the breathalyzer test. He has quoted Ward Smith as an expert in his particular field.

Mr. RABINOWITCH: May I answer that? I have three letters before me, one from the general secretary of the Canadian Medical Association dated July 6, 1964. This letter was in reply to a letter I wrote asking the Canadian Medical Association to organize a committee—not to have me on it, not to have Ward Smith on it—and to have the outstanding physiologist in the world on it, who happens to be in Toronto, Dr. Charles H. Best, who discovered insulin with Dr. Banting. Here is a top notch authority on human metabolism, there is no question about that, I wanted him on the committee, and then I wanted Dr. Ferguson, professor of pharmacology at the University of Toronto, a doctor of medicine and an authority on metabolism. They refused to set up that committee. They felt their own experts were sufficient. Not only that, but in this letter, Dr. Kelly says, "it will not surprise you that I am incompetent to judge the merits or shortcomings of a breathalyzer test".

Then I get a letter from Dr. Troup, who at one time was on the committee, and Dr. Troup says, "Like Dr. Kelly, I am not a pharmacologist, but because of the views you have expressed I am referring the correspondence to three medical men". Why he could not get Dr. Best at the time I do not know, but I think Dr. Best was sick at the time. He said Dr. Ferguson would be very glad to appear before this committee. I received a letter from Dr. Troup telling me that they will not hold this meeting and therefore Dr. Ferguson was not called. I sent a copy of that letter to Professor Ferguson. I named one man in Canada, in addition to this fellow Cantor, who could argue with me on this particular point. He is a real authority on metabolism. Why did they not ask Dr. Best's opinion? Why did they not go to Dr. Ferguson? If you wish you may have photostated copies of these letters.

The CHAIRMAN: Would you like to have photostated copies made available?

Mr. MATHER: Yes, I think that would be a good idea.

Mr. MATHER: Mr. Chairman, the doctor is critical of the basis on which the Canadian Medical Association appointed its committee or arrived at its opinions. Nevertheless the Canadian Medical Association did appoint a committee and they, like the American and British medical associations, favour the breathalyzer test. He has quoted from Ward Smith who has already appeared before this Committee and said that in his own field he is an excellent man and an expert. I think that is fair.

Mr. RABINOWITCH: There is no question about it. As a pharmacologist he is tops.

Mr. MATHER: I want to quote from Ward Smith on what seems to me to be an important ingredient in the doctor's contention, that is, the variance between blood and breath with regard to alcohol tests. Now Ward Smith says, and I am quoting from the *Criminal Law Quarterly*: "In practice"—that is, in the practice of taking a breathalyzer test—"In practice there is always some lapse of time after an accident or moment of arrest and the time of taking a breath sample. It should be stressed that at no time does the breath test indicate a concentration higher than that which is in the blood being carried to the brain. It is the concentration of alcohol in this blood"—the arterial blood—"which is the best index of the activity of alcohol on the brain and, so far as it applies, of the behaviour of the person. Theoretically, when this effect is extreme, calculations based on the concentrations of alcohol in breath and the body weight intended to reveal total alcohol in the body may result in a quantity greater than that consumed. Practically, as the results obtained by the officers in training will show, this effect was not demonstrable in their experiments under extremely rigorous drinking conditions."

I would like to ask the doctor's opinion on that statement by Ward Smith.

Mr. RABINOWITCH: That point has come up time and time again, ad nauseam, in our courts.

Everything that we know today about the relationship between the degree of impairment of the mental faculties—or intoxication, if you like—and blood is based on venous blood.

Now, here I have given a person a sample of drink and his blood goes up, it reaches a peak, and then it comes down. These are his veins, these are his

arteries. Dr. Smith is absolutely right when he states that what determines the intoxication is the level in the brain and not the level in the blood. Now, that is the arteries. I have talked time and time again with Dr. Ward Smith and I simply cannot get that point across. It is simple reasoning. It is not a question of stupidity; he is not a stupid man. He is not a doctor and I cannot talk that language to him. Here is what I have been trying to show courts time and time again.

I hope none of you people here are diabetics because I am going to show you something about diabetes. We want to know if a man is a diabetic or not. He has a very mild case, he has no symptoms. He applied for life insurance, they found sugar in his urine and they turned him down. They send his urine to somebody else to see if he has diabetes. You give him a drink of sugar and you take a sample of blood and you do his blood sugar periodically. If you find that the blood goes above 180 he is a diabetic. But suppose you took a sample of his arterial blood, it would not be 180, it would be 240 or so. Suppose I just took the arterial blood and not the vein; everybody in this room would be a diabetic because you would all be above 180. What you are doing is comparing cabbages and cows. You are using the vein for your test and you are using the artery. Furthermore, a man can only have a certain degree of impairment at a particular moment. He cannot have a higher degree and a lower degree at the same time. He can have two different bloods at the same time, one in his artery and one in his vein, but he is either impaired or he is not impaired with a particular level. Now, that particular level which we all use is the vein, not the artery. In fact, I could not get that across to some judges, but it is true. What determines the intoxication is the effect on the brain. It is true that the artery reflects the brain and not the vein. It is true that the breath reflects the artery, but you are not testing the artery, you are testing the vein. Let us say that I have a wheel one foot in diameter and I have another wheel of only two inches in diameter, and I connect the two of them with a pulley. The small wheel makes many more revolutions than the large wheel but the car is only going a certain speed. The car is being governed by this particular speed, not by that speed over there.

Mr. MATHER: You would then disagree with the contention of Dr. Wallace Troup, who was the chairman of the Canadian Medical Association committee, who stated that the important fact is the amount of alcohol in the arteries supplying blood to the brain, and the breath test measures this with great accuracy.

Mr. RABINOWITCH: I do not want to get involved in personalities, but Dr. Troup, as far as being an expert, does not compare with Ward Smith. In fact, in a letter to me dated July 14, he says, "I am not an authority." What is the good of accepting what he says when he himself says, "Like Dr. Kelly, I am not a pharmacologist and because of your views I am referring the correspondence to three medical doctors who share our interest and concern in the serious problem of drinking drivers."

Mr. MATHER: You would prefer Dr. Ward Smith to Dr. Troup?

Mr. RABINOWITCH: Oh, there is no question about it.

Mr. MATHER: Let me quote this from Dr. Ward Smith:

The concentration of alcohol in the breath test will more closely reflect the condition of the subject than will the concentration in the arm (venous) blood.

Mr. RABINOWITCH: Would you mind repeating that, please?

Mr. MATHER: There is a paragraph here by Dr. Ward Smith in which he is describing absorption of alcohol in the body. He has three points. I think the key point is his ending in which he says:

In this respect—

That is, during the absorption—

—the concentration of alcohol in the breath test will more closely reflect the condition of the subject than will the concentration in arm (veinous) blood.

Mr. RABINOWITCH: Sir, you have the answer to your problem. All you have to do is change this. Delete the word "vein" and put in the word "artery", and delete the whole matter of impairment. Get rid of the statutory offence. It means nothing. Do not bring in impairment, because if you bring in impairment it will bring me back to the courts and that is a nuisance. It is not very pleasant to have to disagree with top-notch men, very highly ethical men, in courts. Delete the impairment and merely make it a statutory offence to have so much alcohol in your blood according to the breath test of the blood arteries. Change from "vein" to "arteries" and you have it.

Mr. MATHER: Well, as I have said earlier, I would go along with the proposition put to us two days ago by the Bar Association in which they would do that. Instead, as my bill, making .08 per cent a basis for conviction, the Bar Association would set a limit, .08 also, and make it against the law for a person to drive with the content at that level or higher.

Mr. RABINOWITCH: Yes, but do not bring in the word "impairment".

Mr. MATHER: Those are all my questions, Mr. Chairman.

Mr. MACEWAN: One question, Mr. Chairman, following up what Mr. Tolmie was asking about urine tests. I would like to ask the doctor if he could give the Committee any idea what the margin of error is in using the urine test as compared to the blood test?

Mr. RABINOWITCH: The urine test, I think, should be accurate within 10 per cent. In a properly conducted laboratory you should do your blood tests within two to five per cent. Dr. Ward Smith's blood test which he devised himself pretty well gets the blood within five per cent. The urine has half the accuracy of the blood, but it is a reliable test. I would like to see the blood, but if you cannot have the blood, have the urine.

Mr. FOREST: Just one question regarding your suggestion to take out the word "impairment" and put .04 instead .08, and use the breathalyzer test. Would that be it?

Mr. RABINOWITCH: No, the point is this, remove the word "vein" and put in "artery". Remove the word "impairment" altogether. Make it a statutory offence. There are certain things the law will not let me do because it is a statutory offence. Make your punishment as much as you like.

Mr. FOREST: What about the breathalyzer test?

Mr. RABINOWITCH: I do not care. Yes, if you will do that, remove the "urine" and remove the "impairment". Then you are depending upon the arteries.

Mr. FOREST: Would .04 be too low?

Mr. RABINOWITCH: No, it would not, because I have seen people with .02 impaired, but a very small number.

Mr. FOREST: But on an average, what would be the amount of drinks a person would have to consume to have .04?

Mr. RABINOWITCH: I have often had that question asked, but you cannot answer it as dogmatically as it is being answered in the court. It depends on your weight, the condition of your stomach, whether there is any food in the stomach, and it frightens me when I hear the dogmatic statement that you have so many drinks in your body. It is very frightening, and I will tell you why. If you get a man early enough he will have more alcohol in the vein in his arm than he will have in the vein in his leg. It is not yet uniformly distributed. There is one point, sir, that you raised which I think should be commented upon. Admittedly, your test is done some time after the accident, but we know that although it is an average, the average fluctuates in a very narrow range. The rate at which the body eliminates alcohol is constant. There are no two people in this room who will eliminate it at the same rate, but whatever your rate is it will be constant elimination. Therefore, if I know what your blood is now, I can pretty well tell what your blood was three or four hours ago.

Mr. MATHER: Mr. Chairman, I have an appointment but I don't want to run away—

Mr. RABINOWITCH: I will tell you, sir, if you have to go away, I am going back to the hotel and I will be there all afternoon waiting for you. I am in room 533 at the Chateau. Come up, sir, and I will give you anything that you want.

Mr. MATHER: Thank you very much for your answer.

Mr. HONEY: I have just one question to ask the doctor. If this Committee recommended to the House of Commons that a statutory offence be created for a person to operate a motor vehicle with more than a stated amount of alcohol in his blood, and if the reference were to arterial blood, are you satisfied, doctor, that the tests made by a breathalyzer would be accurate enough for the purposes of justice?

Mr. RABINOWITCH: Yes. Arterial blood, yes.

Mr. HONEY: This may be more of a legal question than a medical one, but would you feel that it might be preferable not to refer to any blood, but merely say that it would be an offence to have a reading of more than .08, or whatever the case may be, shown on a breathalyzer, rather than tying it in to arterial blood?

Mr. RABINOWITCH: You mention no blood at all. You do not mention impairment. Use anything you like with a breathalyzer. Use your own judgment, your opinion is just as good as mine.

Mr. HONEY: My opinion—and I just throw it out to you—is that the Canadian Bar Association has suggested that there, in effect, be two offences. One it would be an offence to exceed a certain amount of alcohol in the blood. If the test indicated that the alcohol exceeded that figure, then the man would have committed the offence. They would create a new offence of impaired driving, which might be proven by clinical evidence or other evidence, not necessarily

related to the breathalyzer test. Would you feel that this two-pronged approach would have merit?

Mr. RABINOWITCH: I do not think the clinical is sufficient. By the time a man shows clinical signs, that is clinical signs that the ordinary policeman or ordinary doctor will detect. For example, one of the earliest signs of intoxication, long before there is anything except for the blood, there is a certain particular thing about the way his eye moves, a certain type of motion. The clinical test is not sufficient. You are not going to solve your traffic problem with clinical tests because you have to be pretty far advanced in impairment to show it.

Mr. HONEY: This is in addition, of course, to the statutory tests.

Mr. RABINOWITCH: All the better. There is nothing better; the more confirmatory tests the better.

There is one point I did not bring up, and that is rather unfortunate because it is a complicated piece of physiology. What keeps—I will try to make it as simple as I can—any food or fluids from passing from our stomach back into our throat and into the back of the mouth, as when you belch, and so on, is the little ring of muscle called the cardia. Unfortunately the cardia does not have the usual strength or contraction that there is in the other parts of the body. It is usually relaxed. If it is relaxed, also bear in mind that the pressure in the stomach is less than the pressure in the gullet, and therefore the least pressure on the abdomen will force contents from the stomach into the gullet back into the throat and give you a false alcohol. That is the reason why time and time again I got a defendant acquitted. I did not want to see him acquitted, he was as guilty as you could make him, but there is a scientific point here, a matter of morality. Before they do these breathalyzer tests they get the man to stoop down to pick up a key or a penny, or something, on the floor. That increases abdominal pressure, and he is forcing alcohol from his stomach into the back of his mouth. Now, these men who are not authorities on human metabolism do not know that point. A number of times I have gotten them to take the man off the charge he was on, and yet I felt badly about the thing because I felt the man was guilty from all the other evidence, but they were using the wrong method. Use anything else you like and the man will be convicted.

Mr. HONEY: The fact that alcohol is forced into the gullet would give an improper reading on the breathalyzer?

Mr. RABINOWITCH: Surely, because you are not measuring the alcohol coming from the breath, you are measuring the alcohol coming from the stomach. That does not happen very often, mind you, but it does happen. In fact, it happened in another case before Mr. Justice King. I want to show you how you have to be careful. This is also a case of criminal negligence. A man was brought in to the station—I have forgotten the details of how the other man was killed—for this breathalyzer test. He was told to sit down in the chair and he sat down. Just as the sergeant was going to bring the machine to him, he said, "I feel sick, I want to vomit." So, the police officer let him get up to go to the bathroom and, in fact, he vomited on his way to the bathroom. He came back, sat in the chair, then they immediately did the test, did not wash his stomach out, and his breath was full of alcohol. As I told Mr. Justice King, "I am sorry to have to disagree with really eminent expert witnesses for the Crown, but it is absolutely criminal"—there was no other word I could use—"to do a breathalyzer test under

these conditions. You were not measuring the alcohol on his breath, you were measuring the alcohol which contaminated his mouth coming up from his stomach." Again, that does not happen very often.

Mr. HONEY: Thank you, doctor.

The CHAIRMAN: Dr. Rabinowitch is very kindly going to make a graph to demonstrate one point.

Mr. RABINOWITCH: When the gentleman comes I will have it all ready for him.

The CHAIRMAN: Is it agreed, then, that this graph be made an appendix to today's proceedings and also whatever photostatic copies are made of the exhibits?

Agreed.

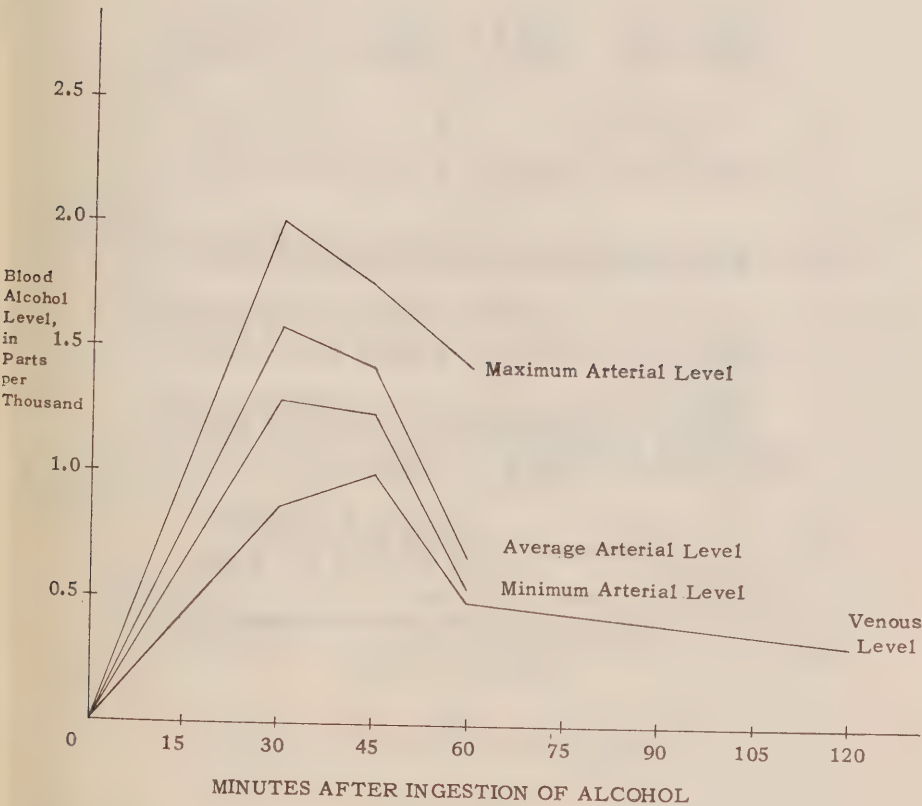
Next Tuesday we will have the Hon. Gordon E. Taylor, Minister of Highways of the province of Alberta, as our witness.

The meeting is adjourned.

APPENDIX 10

ARTERIAL AND VENOUS
Blood Alcohol Levels

(Reproduced from Information Supplied
by Dr. I.M. Rabinowitch from Data
Supplied by Dr. R.N. Harger (Letter of Aug. 22, 1966).)



ARTERIAL - VENOUS RATIOS

A/V	Minutes after Ingestion of Alcohol		
	30	45	60
Maximum	2.58	1.66	1.41
Minimum	1.66	1.25	1.12
Average	1.97	1.41	1.27

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

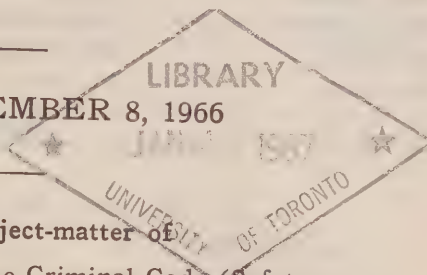
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 16

TUESDAY, NOVEMBER 8, 1966



Respecting the subject-matter of

Bill C-26, An Act to Amend the Criminal Code (Safety
Devices for Automotive Vehicles)

Bill C-49, An Act to Amend the Criminal Code (Dangerous
Motor Vehicles)

and

Notices of Motion Nos. 26, 31, and 38.

WITNESSES:

From: the Government of the Province of Alberta: The Honourable
Gordon E. Taylor, Minister of Highways; and J. J. Frawley, Q.C.,
Counsel.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Laflamme,	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Scott (<i>Danforth</i>),
Mr. Chrétien,	Mr. MacEwan,	Mr. Tolmie,
Mr. Fulton,	Mr. Mather,	Mr. Trudeau,
Mr. Goyer,	Mr. McCleave,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Woolliams—24.
Mr. Guay,	Mr. Nielsen,	
Mr. Honey,	Mr. Otto,	

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 8, 1966.

(20)

The Standing Committee on Justice and Legal Affairs met this day at 11.25 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Chrétien, Forest, Graftey, Honey, Laflamme, MacEwan, McCleave, McQuaid, Scott (*Danforth*), Tolmie, Wahn (13).

In attendance: From the Government of the Province of Alberta: The Honourable Gordon E. Taylor, Minister of Highways, and J. J. Frawley, Counsel.

The Chairman introduced the Honourable Gordon E. Taylor, Minister of Highways of Alberta who read a prepared brief re Bills C-26, C-49 and Notices of Motion 26, 31 and 38.

Following his statement, he was questioned.

On a question by Mr. McCleave, Mr. Taylor said he would supply the Chairman with a copy of the Alberta Legislature Report of the Legislative Committee Appointed to Examine into Matters Relating to Automobile Insurance—1966.

At the conclusion of the hearing, the Chairman thanked Mr. Taylor for taking the time to appear before the Committee, and also for his informative statement and enlightening answers.

At 12.40 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, November 8, 1966.

The CHAIRMAN: Gentlemen, we have a quorum.

You have all received a letter from the clerk of the Committee asking what your intentions are with regard to the trip to Windsor and Detroit. I would ask that you reply to this as soon as possible. I think it will be a really worthwhile trip. Would you please bear it in mind, and to check your diaries to see whether you can, or cannot, be present.

It gives me a great deal of pleasure to introduce the Hon. Gordon E. Taylor, Minister of Highways for the province of Alberta. Mr. Taylor has been interested for a long time in traffic safety, and he represented Alberta at the recent provincial conference on traffic safety.

I think you all have a copy of his brief which he sent to the Committee this morning. If you do not have a copy, the clerk has them at the head table.

Without further ado, I will call on you, Mr. Taylor, to make your statement.

Hon. GORDON E. TAYLOR (*Minister of Highways, Government of Alberta*): Mr. Chairman and hon. members, before reading the submission, I would like to make a correction on the front page. Where "No. B-49" appears it should be "No. C-49", and this should be corrected throughout the submission.

The CHAIRMAN: That is a question of privilege.

Mr. TAYLOR: I would also like to express my regret at not having been able to submit a copy in French. We were so busy that I just did not get time to do this, and I regret this very much.

I am very pleased indeed to accept the kind invitation of your Committee to make representations in connection with

(a) Bill No. C-26—An Act to amend the Criminal Code, Safety Devices for Automotive Vehicles; and

(b) Bill No. C-49—An Act to amend the Criminal Code, Dangerous Motor Vehicles.

During the year 1965 close to 5,000 persons were killed on the highways and streets of Canada. The death toll included little babies and even unborn babies, senior citizens and all age groups between the two.

There is no greater tragedy than the death of a child and this tragedy was repeated over and over again on our roads and streets from the Atlantic to the Pacific and from the International Boundary to the far north.

Whole families were wiped out, others were left fatherless or motherless while scores and scores of homes were saddened because the son or daughter, the brother or sister, the husband or wife would never again return.

A few days ago the entire world was shocked and saddened when more than one hundred and fifty children in Wales were, almost instantly, wiped out.

Investigations and research were jolted into action to ascertain the reason or reasons for the disaster and to make sure in so far as it is humanly possible to do so, that it would never happen again.

In Canada in 1965 close to 5,000 human beings died from automotive accidents and except in the home community the news scarcely made the front page of our news papers. Far too many people have come to accept as inevitable the toll of human life that is daily taking place on our highways and streets; they seem to say "It is the price we have to pay to have a motorized age."

If a town of 5,000 souls was destroyed by a slide or an explosion or a poisonous gas or a terrible disease or for reasons unknown, the whole Canadian nation would rise and do whatever was necessary to ensure that it would never happen again.

The facts that these deaths, to say nothing of thecrippings, occur singly or in small groups should not deter action.

Let it first of all be sounded from the rooftops—*These Deaths are not inevitable!* Our accidents can be drastically reduced!

I am very pleased indeed that the Members of the House of Commons have not accepted the theory that nothing can be done to reduce this massacre that is taking place on our highways and streets. The bills now before this Committee and Bill C-87 (Impaired Driving) are evidence of concern which indicate a sincere desire to do something effective towards a solution to the greatest social problem facing this nation.

Certainly, there is no royal road to safety and the desired solution probably lies in a multitude of interlocking answers and a combination of many items involving human behaviour, the manufacture and maintenance of vehicles, the design and construction and maintenance of highways, roads and streets, effective use of signs and devices, improved and uniform licensing of drivers, driver education, carefully thought-out legislation, wide-awake policemen, strict magistrates and judges and a willingness to do what has to be done to find the causes or causes of accidents through research and to then apply the solution without fear or favour.

The Canadian Government could help materially in solving this problem by

- (1) establishing a traffic accident research center, possibly attached to or made part of the National Research Council; and
- (2) creating a central traffic branch in the Department of Transport or some other appropriate department to conduct investigations and inquiries and to deal with safety matters arising out of the operation of motor vehicles that affect the whole nation.

I. Research

Canada has lacked a co-ordinated research program geared to finding out the whys and wherefores in connection with the causes of accidents. There is very little data that accurately defines the magnitude of the many and varied human, vehicle and environmental factors that may be the cause. We glibly parrot the story that the driver is responsible for the greater percentage of fatal accidents without any actual data to prove it; we say the vehicle and the road, even if perfect would reduce the accidents by only ten or fifteen per cent—but do we know? We deplore the idea that tires might be responsible for a much higher percentage of our highway deaths; and, we have left the research into vehicle road worthiness almost entirely to the manufacturers.

As a result, there have been few standards established and the average Canadian has been left to the wiles of the high-pressure salesman and high-pressure advertising which has too often emphasized only the horse power.

(a) Take for example the tire. It was only this year that a Committee was set up to establish a standard.

In 1965, I, on behalf of the Alberta government, wrote to the Canadian Standards Association asking that a standard be established.

Unless a tire has some mark or sign to indicate that it meets a minimum standard, how is the buyer to know whether the tire is inferior or superior or mediocre? Surely the price charged can't be the criteria.

C.S.A. in reply to my letter stated that unfortunately the Canadian Standards Association had been unable to obtain complete support for this project. It went on to say that the Rubber Association of Canada had recommended minimum standards for new passenger car tires. Correspondence with the Rubber Association of Canada indicated that all tires manufactured in Canada after January 1st, 1966 would meet this minimum standard.

The Rubber Association of Canada is to be commended for establishing a standard on its own and the Canadian tire manufacturers deserve praise for accepting that minimum standard on a voluntary basis. But this in itself would not solve the problem. Inferior tires from other countries could be shipped in and sold to our people; and it is conceivable that tires could be made in Canada from old stock and there would be no mark on the tire to indicate that it met any standard.

I, and many others, I suppose, throughout Canada, continued to urge the establishment of a C.S.A. standard. The matter was raised at the Canadian Highway Safety Conference in Calgary in May 1966 and a resolution asking for a standard was passed.

I was very happy to receive a letter dated July 21st, 1966, from the Canadian Standards Association which included the following information, and I quote:

"The Canadian Standards Association wishes to announce that after considerable discussion with numerous Canadian interests, and the Canadian Government Specifications Board, authorization has been granted by the C.S.A. Board of Directors for the development of the C.S.A. Standard for automobile tires."

The Committee is now at work.

Questions properly asked are:

1. Why should the quality of an item as important to safe driving as the tires on our vehicles, be left entirely in the hands of the Rubber Association and the tire manufacturers?

2. Is the tire responsible for many accidents attributed to the driver or other causes?

The "C.S.A." mark on our tires to indicate its quality is long overdue and it is urgent that the standard be established before inferior tires that don't meet the standards elsewhere, are dumped into our market to be sold at bargain prices. It will be no bargain for Canada to save a few dollars and then kill or cripple the occupants of the vehicle.

(b) Again, vehicles are sold in many sizes and weights, with various sized engines, acceleration power and braking power. What in fact is the desirable

horse power of a car, of a truck and what constitutes adequate braking power? Should the size and power of an engine be in accordance with the size of the vehicle? Are some accidents attributed to driver error when possibly the engine of the vehicle was too powerful for the chassis or the braking power inadequate for the weight carried?

Research could bring out the true facts.

(c) We have no comprehensive statistics today that indicate the real cause or causes of traffic accidents and traffic fatalities. A busy police officer fills in the form with the most obvious cause or the driver who may have been responsible blames it on the steering or the road. It is most important and basic to the whole concept of highway safety to ascertain to the greatest possible degree, the true cause.

The Air Transportation System has an Accident Investigation Board to investigate aeroplane accidents. When the aeroplane crashed near Montreal killing some 100 persons, the Canadian Government put the plane back together, piece by piece, in an endeavour to find the cause at a cost I am told of some four millions of dollars. No criticisms of this action was heard from the Canadian taxpayers because it could well mean that never again will such a tragedy occur.

Careful organized research into the cause of traffic accidents that killed close to 5,000 human beings in 1965 should be given equal attention by the Canadian Government.

A national traffic accident prevention and research center could find the real answers to scores of unanswered questions that need to be answered.

The research in our country and in the United States and elsewhere could be co-ordinated to avoid duplication and to provide answers upon which legislation and policies could be based.

II. Investigation

Many investigations can only successfully be carried out by Government.

(a) A Legislative Committee was set up by the Alberta Legislature early this year to ascertain the reasons for the high cost of Automobile Insurance. Items 11 and 12 in the Report read as follows:

"The Committee looks with concern on the following:

(11) Contentions submitted to the Committee indicate that there may be a plan by automobile manufacturers to deliberately design vehicles in order to insure a built-in high profit from parts, etc.

The modern car is vastly different from the car of a few years ago; it now involves much chrome and the design of the body of the car makes it difficult to repair it.

For example, the inside of a panel must be cut off and then welded back on in many makes of cars; the electrical system is generally badly damaged when a door is damaged and becomes an expensive item to repair; the tail lamp because of its position is now invariably damaged on many cars when there is a rear-end collision. In cars of former days the replacement of a tail lamp cost \$2.00 or \$3.00 but now its costs as high as \$70.00 and \$80.00. By changing the position of the tail lamp many would not be damaged at all. Similarly, if head lamps were placed further back in the design of a vehicle, many would not be damaged through collision. It is noted that the cost of radiators has just recently increased by 12 per

cent. It now costs \$150.00 to carry out repairs to parts of the vehicle in front of the radiator. There are now even among models of the same manufacturer different types of radiators depending on the motors. Again, at one time a rear fender cost \$11.00. Now the whole panel must be replaced costing \$150.00 or more. The automobile window in a car now adds \$100.00 or more to the replacement costs.

The prices of parts are set at the factory. The Committee notes that some competition is in evidence, for example, one set of molding is priced at \$9.00 while another, claimed to be equally as good, is priced at \$4.00.

(12) The change of models every year by manufacturers.

This constitutes a large increase in cost initially and increased costs for parts thereafter."

Is there such a built-in plan to insure a built-in high profit from parts?

How can we find out? It is respectfully submitted that a Branch of the Canadian Government could investigate such matters and take steps to deal with the situation if a racket is discovered.

(b) This Branch could do the jobs mentioned and provide assistance without in any way duplicating the work assigned in our constitution to the Provinces or interfering in any way with the work of the Canadian Highway Safety Council which is an excellent national organization and doing a splendid job co-ordinating safety activities and providing incentive and leadership to voluntary groups across Canada, but which does not have the authority or the finances to do the work mentioned in this brief in research and inquiry.

Bill C-26

As the Committee is aware, the Canadian Government Specifications Board has held meetings this year and has been successful in recommending 27 standards. While these are intended to apply specifically only to vehicles to be purchased by the Canadian Government, other jurisdictions such as Provincial Government and Municipal Governments may also adopt them and so they could become universal in Canada.

Standards conspicuous by their absence include the following:

- (1) Defrosters for the rear window;
- (2) Recessed or safer door and window controls;
- (3) Padded back of front seat;
- (4) Location of cigarette lighters and ash trays;
- (5) Arm rests that will compress or squash in a lateral collision;
- (6) Head rests;
- (7) Side marker devices;
- (8) Fuel tanks and tank filler-pipes;
- (9) Outside ornamentation, accessories and protrusions; and
- (10) Rear luggage compartment barrier.

There is, of course, a danger in listing items in legislation. Some standards may be added, others deleted or changed and it is therefore much better to make the bill applicable to "Standards approved by the Canadian Government Specifications Board". This would have a further advantage as the finished product would have to meet the required performance standard as set out by the

Board. For example, one padded dash may look the same as another but one could be effective as a safety feature and another could actually be a hazard.

It is most essential that these safety items as recommended by the Canadian Government Specifications Board be standard equipment and not options.

And finally, I would strongly recommend that we establish adequate performance standards and not design standards. This will provide the inventive genius of our design engineers and others full opportunity to find better and then even better ways and means of giving the people the results they want.

I am not sure that adding a few safety features, piece-meal, is the real answer. I believe the manufacturers have design engineers who can produce a vehicle or vehicles as an entirely new package designed to protect the passengers much as an egg crate protects the eggs. It may or may not have a collapsible steering wheel, recessed fittings, shock-absorbing front end and all of the other safety items. In fact, we shouldn't be telling the manufacturer and design engineer how to do the job and what to put on the vehicle—we should tell them the result we want and let their technicians figure out ways and means of achieving that result.

If we can put men into space, surely we can design and build a vehicle that will protect its occupants from injury and death.

Until we take this approach, however, every safety feature added will help.

Bill C-49

The Vehicle Inspection crews of the Government of Alberta this year reported, in part as follows:

"1. We note that late model cars with set-in tail lights tend to fill up with road dirt quite readily and this reduces the density of the light considerably. This condition would lessen if the lights were flush with the body of the car.

2. This second point may not pertain to the design so much, but, it tends to create certain hazards. We feel that the new car is not receiving the type of final inspection that it should. Some new models are being tested with headlights out of focus, front wheels out of alignment and brakes not properly set up."

Bill No. C-49 is a type of negative legislation. It is doubtful if it would be used to any great extent even if it was enacted into the Criminal Code. It provides that as long as an executive officer or director of a corporation receives advice from an expert with respect to the safety of a vehicle, he is exempt from the provisions of the bill. Unfortunately, though true, some experts, in any field of endeavour, can always be found for a price.

The objectives of the bill however are good and I would suggest that these could better be met by setting out clearly the performance standards required and then provide penalties for failure to achieve the said standards. This could be done by amending Bill No. C-26.

Conclusion

The auto represents progress and it is basic to our way of life. More than 3,500 makes of cars have come on the market since 1895 and the end is not yet. Certainly Government should not do anything that will deter the inventive genius of our people for in that direction lies our greatest hope. Neither should

Government look for a scapegoat; nothing can be gained by pointing the finger indiscriminately at one group or another. Man is imperfect and there will always be accidents but there are reasons why the toll of human life from the auto is so great. We, in Canada have been lax in not finding the answers. They can be found by research and inquiry and then, if appropriate action to eliminate them or compensate for them is not taken, Heaven help us!

All of which is Respectfully submitted,

Gordon Taylor,
Minister of Highways,
Government of Alberta.

The CHAIRMAN: Thank you very much, Mr. Taylor.

It is our usual custom at this time to allow the members to ask questions of the witness. Before doing so, I would like to introduce Mr. J. J. Frawley who is legislative counsel for the province of Alberta. I think he is permanently stationed here in Ottawa to safeguard the rights and interests of the province of Alberta.

Mr. J. J. FRAWLEY (*Counsel for the Province of Alberta*): I would just make a slight correction, Mr. Chairman. I am not legislative counsel. There is only one of those, and he lives in Edmonton. I am counsel for the Alberta government, stationed in Ottawa. I live in Ottawa. I am very happy to come along with Mr. Taylor this morning.

The CHAIRMAN: Thank you very much, Mr. Frawley. I see Mr. Tolmie and Mr. Wahn. Has anyone else got their hand up? Mr. McCleave and Mr. Aiken.

Mr. TOLMIE: Mr. Chairman, as we all realize, there has been a great deal of discussion about the possibility of enacting a national safety code which would force manufacturers to incorporate certain safety features in automobiles. There has also been some discussion about the jurisdiction of the federal government to do this. There is a question of provincial rights.

When I was following your brief I was not sure about your view in this matter. Some people feel that national guidelines are sufficient. I would like to get your view or whether you feel that the only effective way to promote traffic safety would be to have a national, mandatory code, forcing manufacturers to incorporate into new vehicles certain minimum safety features?

Mr. TAYLOR: Yes, Mr. Chairman; we feel that the only logical way to build a safe car is to have it built under national legislation. It would lead to utter confusion if ten provinces each set out the requirements for a vehicle and they all happened to be different with respect to safety features and qualities and so on. The car manufacturer would be in an impossible position.

It is our belief that it is logical and reasonable for the federal government to set standards for a safe vehicle that are acceptable right across the nation.

Mr. TOLMIE: This would be a type of national code, and if a manufacturer did not comply with it, of course, there would be the right to impose penalties. Is that your view?

Mr. TAYLOR: I believe that penalties would be necessary.

Mr. TOLMIE: It has been my opinion that there are many more used cars on the road than there are new cars. If we are really serious about promoting traffic safety we should do something about the used cars.

Do you feel that, either through the provincial government or the federal government, there should be legislation making it compulsory for all owners of used cars to have certain minimum safety features incorporated into their cars?

Mr. TAYLOR: I believe that the program, starting from a certain date, would be applicable to car manufacturers, and I believe that this can only properly and logically be done from the federal level. However, when it comes to used cars I cannot see any reason at all why the provincial governments should not enact the necessary legislation for the life of those cars. This would eventually correct itself. For instance, we in Alberta this year are now preparing an act on used-car lots. We have had complaints from many of our people that they are buying, from used car dealers and from used car lots, vehicles that have faulty steering and faulty tires, and there was one that did not even have the tie rod properly fixed.

We feel provincial legislation must look after the vehicle once it enters that province and is used on the highways, streets and roads of that province. The maintenance of the vehicle is absolutely essential. You can make the best vehicle in the world and if it is not maintained, then you are not going to keep it safe very long. You can make the best tire in the world but if you do not inflate it properly, then it can become a hazard rather than a safety feature. We certainly think there is a place where the provincial governments have a very definite responsibility in maintaining vehicles at a high level.

Mr. TOLMIE: Does your present government have any proposed plan along this line?

Mr. TAYLOR: Yes, we have.

Mr. TOLMIE: We have stressed safety features in cars for years. I have always wondered if perhaps going to that extent, that is incorporating safety features, we may not be getting into a position where the driver himself or herself is lulled into a false sense of security, if we keep stressing the actual safety features, so that they believe that they are in a vehicle which eventually will not be involved in an accident and their degree of care diminishes. Has that been studied by your department?

Mr. TAYLOR: Yes, we have given a lot of thought and study to that. There is little evidence to show that the average driver would become more careless if he was in a safer vehicle. We have not found this attitude at all. The person who wants a safe vehicle is a careful driver. He realizes that if he goes without his seat belt tied up, without his lap belt on and so on, he can expect to be hurt if he is in a collision. There is a requirement on the part of the driver; but for too long and I say this with respect, we have simply parroted what has come from somewhere that the driver is responsible for 90 per cent of the accidents on our highways and streets. I cannot find any definite evidence of this. There has been no research to show. As a matter of fact, the research done by the Lytle group in the United States recently came out with the conclusion that there was no one single factor that they could put their finger on as being the greater cause of automobile accidents.

I think that we are going to have to recognize that the vehicle may have been causing a much higher percentage of our accidents than what we have been formerly led to believe. We may also have to come to the conclusion that the highways and roads have led to a much higher percentage of accidents than

before. It may be that many of our people were killed because of defects in highways or defects in vehicles and not because of their driving.

On the other hand, it may well be that many of our people were killed because a tire blew and this caused the collision that killed people in both cars when they collided, or that something went wrong with the steering; because after the crash up we do not check our vehicles. We do not know what caused it. We take the policeman's answer; sometimes the answer of the driver who wants to protect himself.

This is one of the reasons I would suggest, with all respect, ladies and gentlemen, that we need some grass roots research on this matter of accidents, so that we can get the answers that are not propagated by one group or another.

The CHAIRMAN: Mr. Wahn, from Rosedale, in Toronto.

Mr. WAHN: Mr. Chairman, it is St. Paul's, Toronto, but thank you for elevating my status.

Mr. Taylor's brief was most helpful to all of us. I was particularly interested in his comments on Bill No. C-49 which I have sponsored.

This bill, Mr. Chairman, provides, in effect, that a manufacturer is criminally responsible if he manufactures and sells a motor vehicle which is not safe, bearing in mind the conditions under which it is expected to be used. That is the basic provision in the bill. There is no subclause which exempts the company merely because the company establishes that expert advice had been obtained.

It was my thought that there would be an objective test, and the counts would have to determine upon the basis of independent testimony whether a particular car was dangerous, bearing in mind the conditions under which it was to be used. However, it seems to me it would be helpful if in addition to imposing criminal responsibility upon the company, we imposed criminal responsibility also upon the executive officers and directors who really control what the company does. This, of course, has to be done with a great deal of care because the general principle is that officers and directors are not personally responsible for the actions of the company. We did provide, in their case, as is done in the case of certain securities acts, that they can exempt themselves from criminal responsibility, if they can establish, in effect, that they took all reasonable measures to make sure that the cars produced by their company were safe.

You can imagine for example, a certain company might have directors who would not actually be actively involved in the production line and would have to rely upon expert testimony, with regard to the safety of the cars. But the basic principle is that the company itself is responsible if it puts out a car which is unsafe, bearing in mind the conditions under which it is expected that the car will be used. I would like to get Mr. Taylor's comments upon the validity of this as a general principle because the alternative, it seems to me, is to list specific safety features.

It seemed to me when preparing the draft bill that these might vary from time to time. We would expect continual improvement as speed of driving and road conditions change. It seemed that a general principle like this might be useful. It is based really upon the analogy of the other Criminal Code section which makes it a criminal offence for anyone to permit an unseaworthy ship to go to sea. It seemed to me that it should equally be an offence for a manufacturer to permit an unsafe car to go on the road. I was wondering if I could have Mr. Taylor's comments on that particular aspect of Bill No. C-49.

Mr. TAYLOR: Mr. Chairman, basically I am convinced, and I believe it has been proven by the study in New York state, that it is possible to produce a safe vehicle that will drastically cut down the number of people who are killed and the injuries of those who are in the car. If we accept the premise that a safe vehicle can be produced I think we are then on the right track.

If our legislation is going to require a performance standard, this would be a second step. After producing a safe vehicle, then I believe the government can properly be expected to say there must be a satisfactory performance standard met by this vehicle. If this becomes legislation, then, of course, there must be punitive sections, that would hold someone responsible. I think the manufacturer, basic to what you said, is responsible for the vehicle that he produces. This has been shrugged off in so many cases by simply saying the vehicle was safe but that it was improperly used by the person who was driving it.

I remember a vehicle that was produced a few years ago that in one year produced many accidents and the consensus of opinion of the mechanics with whom I talked was that this chassis was too light for the power of the engine. There have been other instances where a vehicle has been too heavy for the braking power. If the manufacturer had obtained the advice of an expert, who had signed an affidavit saying that such a vehicle was satisfactory, what would be the possibility of laying a charge and carrying out the penalty section? He would be protected by the person who signed this. Therefore, it comes down to a question of whether you prosecute the man who signs the affidavit. If you do not go that far, then anybody can sign a certificate and relieve the top executive of the responsibility.

Mr. WAHN: But the company would remain responsible.

Mr. TAYLOR: I fully concur with the suggestion that the company that manufactures a vehicle should, in the final analysis, be held responsible for the safety of that vehicle. If they have an inadequate braking system, or an inadequate steering system, or something else that causes the death of somebody, then they should certainly be held responsible.

Our suggestion on Bill No. C-49 is that we feel it would be better to have a positive bill setting out the type of vehicle you want, and then have penalty sections saying what would happen if this vehicle is not so produced. This embodies the general idea that you have in Bill No. C-49.

Mr. WAHN: My second question is this: Some models may be inherently unsafe. For example, I have been told that perhaps a convertible, or an open car, is more unsafe than a closed car. If you have a closed car it is possible, by properly enclosing the driver, to protect him in the event of collision, whereas a person in an open car is likely to be thrown out, or the danger is greater. Taking it to the extreme, I have been told that these very light motorcycles, for example, are the unsafest motor vehicles of all.

What is our thinking on this? Do we accept this because they are saleable and they are in demand by the general public, or do we accept the principle that there are some kinds of vehicles that are so inherently unsafe that they should not be on the highway at all?

Mr. TAYLOR: My comment, sir, is that some vehicles are safer than others. Certainly, there being no enclosure at all on a scooter or a motorcycle, a person is leaving himself open to much more severe injury than is a person who has an enclosure that has been well built to protect him.

I think there always has to be some responsibility on the person who is purchasing and the person who is going to use it. If I buy a sports car which is an open top convertible, then certainly the manufacturer should not be held responsible if I roll that vehicle and kill myself. Extra care is required when you are operating a scooter or a motorcycle, or a sports car. I believe that brings in the provincial legislation, where there have to be certain requirements of the person who is going to operate those vehicles, and certain regulations governing the use of them.

Mr. WAHN: This is my last question, Mr. Chairman, and it deals with the expense of safety features, I believe it has been said at times that to provide some of the safety features which have been recommended would greatly increase the cost of motor vehicles.

The witness has pointed out that great expense is caused because of frequent model changes. If we have to choose between frequent model changes and more safety built into vehicles, I gather that the witness would prefer to have greater safety built into the vehicles and fewer model changes. Am I correct?

Mr. TAYLOR: I do not think that we would ever want the Canadian government to get into a mould, where there is going to be one make of car, any more than we want to have ever woman and every man dressed in the same type of clothes, and so on. This is part and parcel of our makeup. We want differences. But these differences can be multiplied without infringing on safety, and I think you would find, gentlemen, that if we said to the manufacturers, "We have to have a safe vehicle which is going to embody these features that have been shown to be safe", they would find many, many ways and many, many different ideas for producing the same result. That is why I suggest performance standards—that they must perform in a certain way—and let the manufacturers find a way to meet those performance standards. I think you will find that they have a variety of ways.

With regard to cost, when I look at the standards that have recently been established by the Canadian Specifications Board, through committee hearings, I cannot see any tremendous increase in cost. We are simply asking them to do something in a way different from what many of them have been doing it. Is it going to cost more to do away with these recesses in the interior of a vehicle? Is it going to cost more to supply a collapsible steering wheel or some other type of steering rather than what they are supplying today? There may be some increase in cost, but, frankly, I do not think safety ever costs. Safety pays, for both the nation and the individual.

Mr. AIKEN: Mr. Chairman, I just have one subject which may result in two questions for Mr. Taylor.

He mentioned, in passing, the "vehicle inspection crews"—and those were the words he used, I think—and also indicated that there did not seem to be sufficient objective inspection of the causes of accidents and the vehicles themselves after the collision.

I was going to ask him, with particular reference to his own department, whether there is any inspection of vehicles after collision, except what is done by police officers?

Mr. TAYLOR: No; we do not have any set-up at all for the carrying out of a thorough inspection of a vehicle, to put it back together, to find out what caused

the accident. The only inspection that is done is by the police forces and by lawyers who are trying to prove a case, and so on.

Mr. AIKEN: The other related question is that he seemed to indicate a lot of drivers, being under the threat of either civil or criminal liability, do not give a reasonable explanation of what really happened.

Has there ever been any thought of allowing the protection of the Canada Evidence Act to extend to persons who are interviewed in connection with the cause of a collision, so that any evidence they give cannot be used against them in civil or criminal cases? This type of procedure seems to have been very satisfactory, for example, at inquests, and in fact this principle does develop at inquests in many cases relating to automobile accidents. But it is only after there has been a death. I am wondering if there had been thought given to some such provision?

Mr. TAYLOR: I cannot answer that fully. In many accidents where you want to find out the real cause, the only people who could tell you are dead, and in that case you almost have to put your vehicle back together to try to find a cause, the same as we do in airplane investigations.

Secondly, many of the witnesses who could tell you do not want to tell you. As a matter of fact, in many potential impaired driving charges, the person disappears and comes back and reports it the next day, within 24 hours. I think that the police and lawyers and the government—everyone—knows that the reason he did not report it before was, probably in 99 per cent of the cases, because he was intoxicated. He comes in the next day and has invented some reason for his not reporting it until that time.

I think it might help, in some cases, to have the protection of the Canada Evidence Act, and perhaps this is an idea that should be pursued. To my knowledge it has not been pursued up to this time.

Mr. McCLEAVE: Mr. Taylor, did you have manufacturers at this committee hearing that was held out in Alberta?

Mr. TAYLOR: On the insurance inquiry?

Mr. McCLEAVE: Yes?

Mr. TAYLOR: No, we did not have manufacturers there. We had auto body people and garage people, but we did not have manufacturers. There are actually no manufacturers in the province of Alberta.

Mr. McCLEAVE: I take it that there was a strong contention to the committee regarding safety features, or the lack of them, in automobiles, and about factor in-built to cause excessive cost in repairs, and the like. I think many of the points raised there would be very helpful if we could have them before we go to our Windsor-Detroit junket. Would it be possible to furnish us with a transcript of the proceedings? Perhaps some of us could go over it and take out some points for the examination of the witnesses in Detroit.

Mr. TAYLOR: We would be glad to let you have a copy of the report. There was no actual verbatim record of the proceedings.

Much of the information that pertains to this particular item came from the representations made by auto body people. I was the Chairman of the committee and we wanted to know why the cost of parts was so high. We felt that this was very relevant factor in cost of insurance. Some of the reasons given by the au

body people for what they had to do led some of them to the conclusion, and also led us to the conclusion, that there could well be a built-in plan to ensure that there is always going to be a very high profit from parts.

When I look at the facts and figures of the Canadian automobile industry, I notice that in 1966 there are more than \$867 millions of dollars of parts imported. This in itself does not prove very much, but it does show that there is a very, very high volume of business being done in parts every year.

Our point here is that unless some government authority pursues this and investigates it right down to the grass roots, we will never know. Perhaps there is a racket going on, which is being carried on at the expense of our people.

As a matter of fact, I have a copy of that report here, and would be very happy to give it to the Chairman.

Mr. McCLEAVE: My final question, sir, is: Did any of these auto body repair people come forward and present briefs, apart from oral testimony to your committee?

Mr. TAYLOR: No, they did not present briefs; they presented oral testimony and we kept notes on what they submitted and then summarized it.

Mr. MACEWAN: Mr. Chairman, I would like to refer to page 2 and to the two suggestions made by Mr. Taylor that there be a traffic accident research centre, plus a central traffic branch, in some department of the federal government, to carry out investigation. If this were set up, Mr. Taylor, how would this be tied up with your various provincial governments? What would be the liaison with, say, your own Department of Highways in the province of Alberta?

Mr. TAYLOR: If there was a central traffic research centre established in Canada, we would then refer matters to that centre, or we would certainly give that centre complete freedom to investigate any accident that happened on the highways and streets of Alberta.

There may be some that we might consider to warrant special study and we would bring them to their attention and co-operate in every possible way.

I believe, from having been at meetings of the ministers of transport from the 10 provinces and also the ministers of highways from the 10 provinces, that you would find 100 per cent co-operation in this type of procedure. This investigation is not being carried out today largely, I suppose, because of the cost and because of the scarcity of people who have the know-how to do it. It seems to me that attaching it to the National Research Council would be the first step, because the National Research Council works very closely with the research councils of each province, and that could be another liaison.

When an accident involving death happens on a highway or road in Alberta we immediately have that area investigated from the highway point of view, which is our full responsibility. If there is any clue at all that indicates that the highway was in any way the cause, our engineer is then held responsible immediately to correct whatever that was.

I do not know of an instance of this, but say there was a case of bleeding asphalt. Sometimes this can take place suddenly. Someone may be killed before it is even reported. This would have to be corrected immediately. It might be too sharp a curve, or it might be that the signing was wrong. But when it comes to the vehicle, we do not have someone going out and saying: "Did this vehicle

cause this?" and going over the vehicle in detail to find out if there was something wrong with it.

Mr. GRAFFTEY: What does the term "bleeding asphalt" mean?

Mr. TAYLOR: When you put on asphalt it solidifies and becomes solid. When you are building in asphalt there are certain things that happen that sometimes bleed the asphalt and loosen it and then it becomes a fluid again. That fluid is on the top, and if you hit that at 60 or 70 miles an hour, you know what could happen. This is just one of many, many things.

The point I am trying to make is that we now have the know-how and the machinery to investigate the highways, but we do not have the know-how and the machinery to investigate the vehicle, and this is what we would like to see done. I think there would be 100 per cent co-operation among the provinces.

Mr. MACEWAN: Following Mr. Tolmie's original questions, am I correct that you believe, as far as the safety features in a car are concerned, that they should be obtained by way of a national safety code?

Mr. TAYLOR: So far as the producing of safe vehicles is concerned, I believe emphatically that this can only be achieved if we have national legislation.

Mr. MACEWAN: Did you have occasion to read the brief that was presented to this Committee by the Canadian Automobile Association?

Mr. TAYLOR: No.

Mr. MACEWAN: If I can recall correctly the evidence—and of course the evidence will speak for itself—this association did call for a national safety code in time, but they suggested that the first step be by way of setting up a council which would consist of governments at all levels and this council would then go into such matters as you set out here, and then the results of that would be forwarded to governments at all levels.

If a national safety code could not be effected at that time, I wonder if an organization such as the C.A.A. suggested might be at least an initial step in this direction? Have you any comments to make on that?

Mr. TAYLOR: Frankly, Mr. Chairman and gentlemen, I believe we stand a good chance of becoming top-heavy with organizations. Today we have a research council in Canada in each of the provinces. We have the Canadian Highway Safety Council which is supported by the federal government and all 10 provinces and industry, and which are in close liaison in trying to co-ordinate the safety factors across Canada. What we do not have are a national research centre and a national inquiry centre, and I frankly believe that the answer is to establish the things that we do not have instead of setting up another organization that is going to do many of the things that are presently being done.

Mr. MACEWAN: Finally, in regard to page 7—I think Mr. Wahn asked questions on this—you say:

And finally I would strongly recommend that we establish adequate performance standards and not design standards.

I suppose, in a nutshell, you could say, "Something with fewer frills perhaps will make fewer bills", or something like that.

Mr. AIKEN: Mr. Chairman, may I ask a supplementary question?

You would suggest, Mr. Taylor, that one organization—perhaps the National Research Council or the Canadian Government Specifications Board—should be authorized to set up minimum standards for new vehicles for national use in Canada?

Mr. TAYLOR: Yes.

Mr. HONEY: Mr. Chairman, Mr. MacEwan dealt with the question I had in mind with respect to the degree of co-operation, and I am pleased—and I know the Committee would be pleased—to have the answer that the federal agency doing research into the causes of automobile accidents has received full co-operation from the province of Alberta, and presumably from other provinces also.

The only other matter I wanted to mention was this: Would you, Mr. Taylor, go so far as to say, with reference to the establishment of performance standards by an agency—whatever agency it might be in this case—that this agency should, constitutional matters aside, have the authority to require, or issue, a certificate before a new automobile can be offered for sale? Would this be one way in which the agency could ensure that the automobile in question met the minimum performance standards which you suggest as a test?

Mr. TAYLOR: Well, frankly, I do not know what the mechanics would be, but I do feel very, very strongly that if any manufacturer, or any design engineer, is deliberately building a weakness into a vehicle that is going to take the life of a human being, no punishment is too great for him. This would be “blood” money of the worst kind.

Now, the mechanics of dealing with this would, I think, have to be thought out very, very carefully, but I believe that, (1), our legislation requires the construction of a safe vehicle which is going to protect the occupants, and (2), to the greatest possible degree, and that in the case of (2) we leave it to their design engineers to determine how they are going to meet these performance standards; and there would have to be a punitive section setting out what would happen if they did not meet those performance standards. I believe that punitive section is just as necessary as the positive section saying what the performance standards are going to be. I think that punitive section should be very severe, because, as I have said before, I do not think any punishment is too great for somebody who tries to make money by killing other human beings.

Mr. HONEY: Do you not think we could probably avoid the necessity of a punitive section—although it might not do any harm to add it—if we took a more direct approach and said: “No automobile manufacturer may offer an automobile for sale unless it is certified by “(this government agency)”—as having met, or as meeting, the performance standards set by—“(this agency)”? In other words, if we believe that it is in the public interest that no automobile be offered for sale unless it meets these standards, it would seem to me—and I would like your comments on this—that this would be a better and more direct approach than setting up the standards and providing a penalty for any manufacturer who did not meet them. This might mean the loss of some lives before we got around to implementing the penalty through prosecution.

Mr. TAYLOR: Mr. Chairman, and hon. Members, with respect, I personally do not think that that would be the best way to do it. If you did it that way the government would, in the final analysis, have to take the responsibility. Second, the government would have to employ top technicians of every type. I do not

think the government should be required to do that at the expense of the general public.

I think the government has the responsibility of saying what the performance standard is, and then surely those who have the know-how, who have the technicians, who have the design engineers, can meet that requirement and if they do not meet it let them take the responsibility. Let us not switch it over to somebody in government who issues a certificate after the thing is all made. In other words, I believe that the industry itself must take the responsibility for what it builds, and that the government should set up the standards to which it wants that vehicle to perform.

Mr. McQUAID: My question may have been partially answered by Mr. Taylor, Mr. Chairman, in reply to a question from Mr. MacEwan.

Mr. Taylor's brief acknowledges on page 2 that there are many interlocking factors contributing to these accidents on the highways, among which he has mentioned the design and construction and maintenance of highways.

I would like to ask him if he thinks that our various provincial governments, and our cities too, in the construction of highways are taking the proper measures to ensure the maximum safety of users of the highways, taking into consideration, of course, the speeds at which vehicles are almost bound to travel on these vastly improved highways. Do you think that proper precautions are being taken by—

Mr. TAYLOR: I can say that right across Canada there have been tremendous strides made in the last several years in the matter of building safety into the very fibres of our highways.

This has been done through a number of agencies. Each province has a very high calibre type of engineer in their highway department and, in addition to that, through the auspices of the Canadian Good Roads Association, we have established committees for setting up geometric standards and every other type of standard for highways. These have been adopted unanimously by the 10 provincial governments and by our large metropolitan governments as well.

There has been tremendous progress made in the actual construction of highways, and also tremendous progress in the know-how of what to do.

In the signing of highways, we have our own Canadian sign manual today that is standardizing signs and making signs uniform from St. John's, Newfoundland to the Pacific ocean. There has been tremendous progress made here. I am not going to say that we have found all the answers but I think we have most of them.

However, one other thing enters into it. We know that when we build a divided highway or a freeway today, as set out in the standards of the Canadian Good Roads Association, that immediately we are going to see a tremendous reduction in the number of fatalities and accidents.

For instance, on the highway that once existed just a very few years ago between Calgary and Edmonton, which is a two-lane highway, generally, with eight or 10 foot shoulders, there were a lot of people killed. We now have either an expressway or a freeway replacing that highway, and the death toll has dropped to practically nil although the traffic has increased. This has been the experience wherever you have constructed a freeway separating your traffic

with no vehicles darting in from the sides; you immediately have a tremendous reduction in your accidents and in your fatalities, sometimes almost right down to nil; but general experience is that accidents have been reduced by two-thirds of those on an ordinary highway. You immediately reach the conclusion: "Well, if we built divided highways or freeways everywhere we could drastically cut down our accidents and fatalities," and this is right; but, the truth of the matter is that you are always bound by economics. You cannot afford to build freeways unless you have a volume of 10,000 or 15,000 vehicles per day. Now, what can be done on the other highways to get this same result.

Mr. McQUAID: That is what I am particularly interested in. I realize that the freeways, of course, are being made as safe as it is possible to make them. I am thinking more of the roads which are not freeways, the ones which are built through rural areas in the various provinces. I am wondering if the cost factor enters into it very much there. For example, there may be what is considered a slightly dangerous curve, and it will cost a lot to take it out. Is there a tendency on the part of governments to leave that curve in and take the chance?

Mr. TAYLOR: I do not think so, in the construction of main and secondary highways. I know what I have done—and I think the other nine provincial highways ministers have done the same thing—and that is that instructions have gone to the engineers that cost is not to be considered in designing a highway when it comes to a matter of life and death, or causing an accident or not causing an accident.

I think, possibly, to a degree, money will enter into it on rural roads in a rural municipality where there is a limited amount of money. I have seen evidence there of very sharp curves. When questioned about it they have told me that they did not have the money to round it out. It costs a lot more to put in a proper curve. It takes more dirt. It takes more right of way, etc. Therefore, economics are certainly a feature in regard to construction of safety into highways and roads but I do not know of any province in Canada today that is using this excuse for designing bad main highways and secondary highways. I believe we would all much rather build fewer miles and build safety into them than to build many miles with sharp curves and improper grading, etc.

Mr. McQUAID: I have no more questions, Mr. Chairman.

Mr. GRAFFTEY: Mr. Taylor, I have just had the opportunity of reading your brief and I am not surprised at its excellence because I have seen you performing in the Committee here in Ottawa over the last number of months, and I want to pay tribute to you before this Committee, not only for the excellent brief you have presented to us, but for the work I know you have been doing in the Standards Specifications Committee over the last months.

Probably nobody has a greater experience involving the three elements in the epidemic than you do, sir—the car, the driver and the road. You certainly show that in this brief.

I am not being controversial. As a federal legislator I have often been accused of just pointing my finger at the vehicle and the industry. I am not trying to do this, and you have had a great experience in these meetings. You have seen the point of view of the industry and how much they are willing to move. In 1965, Senator Kennedy, before the Senate Commerce Committee in the United States Congress, in testimony he received from the executive of G.M.,

found that they were spending only about \$1 million point something on automobile safety research, and that their profits were around \$2 billion.

Do you feel, sir, from what you have experienced in committee meetings, that the automobile industry has done enough significant safety research to merit our visting their establishment in Detroit and Windsor? I know that a great many of the United States legislators have refused to go because they know they are spending so little. Do you think it would be preferable to insist that they come and testify before this Committee, rather than that we go down there—unless, of course, they have done a great deal more in the last year than they have done previous to the year before? Do you have any information, sir, that would indicate whether it would be worthwhile for this Committee to take two days off to go down to Detroit or Windsor, as the case may be, and spend this amount of time seeing what could be the relatively little research that is being done at the present time?

Mr. TAYLOR: I really do not know that I am fully qualified to answer, but my own view on it could be summed up, I think, in three observations.

(1) I believe that the car manufacturers could properly have spent much more money on research, and that they could have included in vehicles safety features that long ago were known and which they did not include;

(2) I believe they have done some very excellent work on certain types of research at Windsor and Detroit.

I personally have seen some of it in Detroit, and I was impressed with what they were doing. I would think that the money and the time would be well spent for your Committee to go down and see exactly what is going on there.

(3) I believe this Committee would be well advised to call these people before it for enquiry, and with the knowledge that you have gained from the various representations here and your knowledge of what is actually going on there, I think it would put you in a very, very excellent position really to get the information your Committee is looking for.

The CHAIRMAN: Mr. Tolmie, do you have a question?

Mr. TOLMIE: Mr. Taylor has answered my question, in effect. My reaction to Mr. Grafftey's statement was that, of necessity, we would not be able to make a statement on whether or not it was worth while until we had actually gone down and seen it. I think Mr. Taylor actually answered that.

Mr. WAHN: I have just one last question, Mr. Chairman, to ask the witness.

Would it not be helpful, Mr. Taylor, if we had legislation which would provide, in effect, that any company that manufacturers and sells a motor vehicle which is not reasonably safe for use on the highway is guilty of a criminal offence, and could not the question determine whether or not the motor vehicle is reasonably safe for use on the highways under existing conditions be left to a court which could take evidence from independent government standards boards which might be established, and also from any other sources which might be relevant? Would that at least not be a step in the right direction?

Mr. TAYLOR: Yes, I would certainly say it would be a step in the right direction. I believe even if nothing else at all were done now, it would certainly be a big step in the right direction. If, however, the Canadian government sets up performance standards and a punitive section, etc., as was set out previously.

Mr. WAHN: But no motor manufacturer would want to have a criminal conviction against it for producing and selling an unsafe motor vehicle. It seems to me that it would be a tremendous incentive to them to produce a motor vehicle which did meet satisfactory performance standards. The danger of anything happening, from a public relations point of view, would be extreme, I would have thought.

Mr. GRAFFTEY: From your experience, Mr. Taylor, and from the meetings that we have all been through, do you feel that the standards we develop must be such as to bring the building of the automobile under the rule of the law, and that public authorities must act—and I am not blaming the industry for this because it is perhaps through a set of circumstances that the automobile industry in general will not act voluntarily, or fast enough, to reach the goals that we are going to have to reach to reduce the epidemic—do you have the feeling, after these meetings, that there is certainly a responsibility to legislate, in that the industry itself will not move unless forced to?

Mr. TAYLOR: Oh, very much so. I believe that legislation is necessary, whether it is of the type suggested by Mr. Wahn or the other type that we have discussed here. I think that legislation is vitally necessary, vitally important, and that it is essential in Canada now.

The CHAIRMAN: That seems to conclude the questioning.

Mr. Taylor, may I thank you for your presentation. You have been asked questions by every member in the Committee so you know just how vitally they are interested. I do not think I can do better than adopt the words of Mr. Grafftey about your experience. We thank you most sincerely.

I hope, Mr. Frawley, that the rights of the province of Alberta have been well protected, and, of course, we are very glad indeed to see you here.

Thank you very much, gentlemen. The meeting is adjourned.

**OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE**

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 17

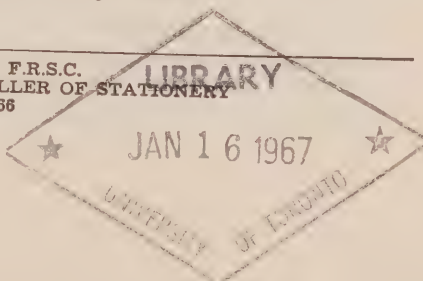
TUESDAY, NOVEMBER 22, 1966

Respecting the subject-matter of
Bill C-87, An Act to amend the Criminal Code
(Impaired Driving)

WITNESSES:

H. Ward Smith, Ph.D., Forensic Scientist, Director of the Ontario Attorney-Generals Laboratory; and *From the Canadian Highway Safety Council:* Mr. P. J. Farmer, Secretary General.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Choquette,
Mr. Chrétien,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,

Mr. Laflamme,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McCleave,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,

Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Trudeau,
Mr. Wahn,
Mr. Woollio,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 22, 1966.

(21)

The Standing Committee on Justice and Legal Affairs met this day at 11.15 a.m. The Chairman, Mr. Cameron presided.

Members present: Cameron (*High Park*), Choquette, Forest, Guay, Honey, MacEwan, Mather, McCleave, McQuaid, Ryan, Tolmie (11).

In attendance: Mr. H. Ward Smith, Ph.D., forensic scientist, Director of the Ontario Attorney-Generals Crime Laboratory; and *From the Canadian Highway Safety Council;* Mr. Philip Farmer, Secretary-General.

On motion of Mr. Forest, seconded by Mr. Ryan,

Resolved,—That reasonable living and travelling expenses be paid to Dr. Ward Smith who was called to appear November 22, 1966.

On motion of Mr. Mather, seconded by Mr. Wahn,

Resolved,—That the Clerk of the Committee travel to Windsor in advance of the Committee in order to finalize arrangements for the proposed trip of the Committee to Detroit-Windsor for the purpose of investigating and holding hearings on automobile safety.

The Chairman announced that the itinerary for the Committees proposed visit to the Detroit-Windsor area is now finalized and that the Members would be receiving them today.

The Chairman introduced Mr. H. Ward Smith, Ph.D., and Mr. Philip Farmer. Dr. Smith was invited to make a statement, followed by which, he was questioned by the Committee.

Following discussion,

Agreed,—That *Methods of Forensic Science*, Volume IV, by Dr. H. Ward Smith be made an exhibit (*See Exhibit 14*).

Following discussion, Mr. Farmer agreed to provide the Committee with copies of the *Grand Rapids Study* at the next meeting.

At the conclusion of the questioning, the Chairman thanked Mr. Farmer and Dr. Smith for their attendance. He expressed the appreciation of the Committee to Dr. Smith for taking time to reappear before the Committee to answer further questions.

At 12.40 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY November 22, 1966

The CHAIRMAN: Gentlemen, we have a quorum.

The first matter of business is the need for a motion that the reasonable living and travelling expenses be paid to Dr. Ward Smith who was called to appear before this Committee on November 22, 1966.

Mr. FOREST: I so move.

Mr. RYAN: I second the motion.

The CHAIRMAN: Are there any comments on the motion?

Motion agreed.

The CHAIRMAN: Also, we require a motion that the Clerk of the Committee travel to Windsor in advance of the Committee in order to finalize arrangements for the proposed trip of the Committee to Detroit-Windsor for the purpose of investigating and holding hearings on automobile safety.

Mr. MATHER: I so move.

Mr. WAHN: I second the motion.

The CHAIRMAN: Is there any discussion?

Motion agreed to.

The CHAIRMAN: The itinerary for our proposed trip to Windsor is now finalized, and I trust that you will be receiving a copy in the mail today. I would ask that every member who intends to go make his intentions known to the secretary as soon as possible. May I say, Mr. McCleave, the trip is shaping up, in a liberal way, much better now. We anticipate it is going to be a very worthwhile and a very educational trip. I hope that every member who possibly can will take advantage of this opportunity.

I would like to introduce Mr. Farmer of the National Safety Council who is here today. The Canadian Highway Safety Council will be before the Committee on Thursday of this week to discuss with us Bills No. C-26 and No. C-49 regarding automobile safety devices.

Our witness today is Dr. Ward Smith, forensic scientist, Director of the Ontario Attorney General's Crime Laboratory. He is going to discuss with us Bill No. C-87. Dr. Smith was with us several weeks ago. He is an outstanding authority on the subject that he will be dealing with, and it is a great pleasure once again to introduce Dr. Ward Smith to this Committee.

Mr. WARD SMITH (Director, Ontario Attorney General's Crime Laboratory): Thank you very much Mr. Chairman.

Gentlemen, I appreciate the fact that there is a quorum here this morning, knowing full well that there are so many Committees meeting

today. It must be very difficult for you gentlemen to make all of the rounds that you have to make. I appreciate your presence here.

As you know, I am here primarily to deal with evidence that is already before the Committee, I have had the opportunity of reviewing some of this evidence since eleven o'clock last night. There are just one or two comments I want to make about it, and also to relate to you some studies which were done on Thursday of last week on racing drivers, who actually drove the track at speed and to indicate to you some of the outstanding findings which bear on the matter under discussion I would like to make those two points and then I will be available for questioning.

I found Professor Rabinowitch's presentation a very strange one indeed. I think Mr. Honey, one of the members here, went to the very root of the matter. His question was with reference to arterial blood and whether the breathalyzer would be accurate enough for the purposes of justice if arterial blood was implied. Professor Rabinowitch answered, "yes, if it is arterial blood."

Now, in that he has indicated and really summarized all of his preceding ramblings on the question of correlation between breath and blood and also the question of the ratio between the amounts of alcohol appearing in breath and those appearing in blood, because it is in fact arterial blood that we are measuring when we use a breath test—and if the bill can be arranged such that arterial blood is implied, then there will be no argument or discussion on this point.

In his discussion and comments on the immorality of using the breathalyzer in court, as I said, his assessment of correlation of breath and blood, the possibility of error in the breathalyzer which he dramatically indicated might be as high as 2 and 12, all hinge on whether arterial blood or venous blood is implied. This position is outlined, as I have outlined it, in a chapter in a recent textbook on the subject, and I will for the record read it because it is a very short presentation. It is subject to the comments and criticisms of my fellow scientists. It does represent a summary of the findings on this particular matter, acceptable to all who have seriously studied this field and, therefore, open to criticism by any in the world who care to criticize this. It has been received as representing the work on the subject.

The concentrations in the breath are governed by a process of diffusion and are the concentrations expected from a consideration of Henry's law, which really states that once you fix the liquid and the type of material you are dealing with then the only variables that enter into the relationship, in this case between breath and blood, is the concentration in the blood and the temperature. Since the body temperature is practically constant, this equilibrium value is predictable. While there are practical difficulties in obtaining an accurate measurement in this relationship, recent work confirms the studies made in 1930 that 2100 millilitres of alveolar air contain the same amount of alcohol as 1 millilitre of blood. Professor Rabinowitch had reference to these studies made by Professor Liljestrand in 1930. He did not indicate, however, that as early as 1930 Professor Liljestrand, based on these studies, outlined all of the mechanics for developing a whole system of breath testing in Sweden at that time, which I think is an indication of how well Professor Liljestrand felt that these relationships applied. They applied well enough that he was prepared to develop this kind of breath

testing system. However as you know, Sweden focussed on a blood test which for them is merely taking a sample from the ear by pricking the skin, and this made the breath testing unnecessary there.

This relationship of 2100 to 1 has been verified by thousands of tests since they were first introduced in 1938. The most recent of these is one in which the conditions were very carefully controlled and the relationship between breath and blood which indicate the precision is such that the agreement between them is within plus or minus .01 per cent; that is, if you have a reading of 10 then the true reading could be anywhere between .11 and .09. This would be at the level of predictability of 1 in 1,000. In other words, only one result in a thousand would lie outside those limits by as much as .003 per cent, which makes it one of the more accurate analytical procedures and confirms this ratio very closely indeed.

In spite of that, the technical and scientific literature abounds with correlation studies done using various breath tests and various methods of analyses employing venous or capillary blood. Professor Rabinowitch had summarized and quoted some of these. For the most part, these correlation studies have been done under conditions in which as the result of a rapid absorption of alcohol from the stomach and intestines into the blood, one would not always expect agreement between venous blood concentrations and the arterial blood concentrations and the latter which is an equilibrium with deep lung air.

It is well known that during the early phases of the absorption of alcohol there is a possibility, and in many instances the high probability, that arterial blood will contain appreciably higher concentration of alcohol than will the venous blood. The concentration of alcohol in arterial blood is, however, a much more accurate indication of the concentration of alcohol being delivered to the brain, and it is this concentration that controls the behaviour patterns of the individual. In this respect, breath tests, in so far as they accurately reflect arterial blood concentrations, should be more desirable than blood tests using venous blood.

I will leave that with the Committee so that when we deal with arterial blood then this resolves any discussion there has been of correlation studies and these things that Professor Rabinowitch has brought before you.

In passing, it is interesting that Professor Rabinowitch referred to Professor Ferguson when he spoke about seeking him out to appear on a medical committee. Now, he must have known Professor Ferguson's views, since these views were stated in a case *Regina versus McLean* in which Mr. Justice Judson, now of the Supreme Court of Canada, sat on the Bench.

Professor Rabinowitch was in the courtroom. In this trial the Crown provided its case. It represented the first Supreme Court case trial involving the breathalyzer in this country. On returning from Ottawa, Professor Rabinowitch called me to express his satisfaction with the use of the breathalyzer, and outlined four points which I had also made in my previous submission to this committee; one, that the term "venous" blood should be deleted from the bill; second, that two tests should be used. The reason for two tests is the remote possibility that a person might regurgitate at a time when there is alcohol in the stomach and this could falsely affect the results. Professor Rabinowitch knows all well about this and has emphasized this point. It was the point made in the

case Regina versus Nault in magistrate's court here in Ottawa. It was in this case where Professor Rabinowitch finally admitted the very close correlation between arterial blood and breath tests. I might also add that this case was resolved in favour of the Crown.

The third point was to make possible the use of blood and urine tests as well as breath to confirm any results that are found. On the question of confirming these tests by means of a breath sample, our studies on the saving of a breath sample indicate that there is a method which is satisfactory for this purpose that is, to collect a sample on absorbent material so that as long as ten days later this alcohol can be released from the absorbent material and measure in the breathalyzer, and this measurement at that time agrees very well with the measurement made initially with the breathalyzer. And it would then be possible to seal this sample which is in a short glass tube. It can be sealed, properly identified, properly numbered so that its continuity can be preserved so we know that, in fact, this sample was the one obtained from such and such a person and satisfy those requirements in the court in terms of continuity. I think this is extremely important in this matter so that no one is fooled by the possibility of a false analysis. I would think that these analyses could well be done under code number by any of the laboratories devoted to this purpose, including our own, so that the results would be returned to the accused under a code number, provided that his lawyer or the person himself could assure us of the continuity of the sample.

His fourth point was to delete the term "impairment". As you know, he feels that the variation in people is such that one cannot say that impairment would always exist in the heaviest drinkers and the best drivers at any particular level. In this there is an area of disagreement. I feel it might be useful to avoid the term "impairment" because people do not like to be labelled this way; it evokes a sort of contest and it may be well to delete the term from that point of view. But it does bring up the question of at what point does impairment in driving ability occur in a person. It is on that point that the studies which we have done recently have quite a bearing.

You will recall that when I appeared before the Committee the last time in answer to the question of whether impairment was present at .08 per cent, I felt that it, in fact, might well be but that our studies to date did not go that far because of the many factors lacking in these studies. One of the factors that was lacking was the question of actual driving under conditions where speed is a factor, and in our recent studies we have included this. We have actually taken racing drivers, some of whom were heavy drinkers, had them drive a test course, both sober and after alcohol, at speeds which were posted at 30 miles an hour in some areas and 60 miles an hour in others. When you introduce this question of the motion of the vehicle you find some very surprising things, one of which is the failure of the human organism under alcohol to appreciate the position of the car, especially on a curve. So even the racing driver who ordinarily is driving partly as the terms goes, by the seat of his pants feeling the motion of the car and anticipating what needs to be done by means of correction of the wheel, under alcohol does not seem to have this feeling. It may well be dulled to the point that he now does not have the sensation of imbalance, and can only use the visual clues to guide him in straightening his car.

So his reactions on the wheel are very rough indeed in adjusting for a curve, and they come late. This coupled with the fact their judgment was impaired, often resulted in their going into these curves at much too high a speed, then getting themselves into a position of imbalance because of the failure to appreciate the position of the car, using only the visual clues, as a result of which their entrance to this curve and procedure through the curve was very rough indeed. They were able to do it only because of their inherent skill. The normal driver encountering those conditions would most certainly have disastrous effects.

There was one thing that showed up that has not yet shown up in any of the previous studies, and if we were able to couple this with the diminished number of clues that one would have in night driving, which after all is where most of the driving after alcohol is done, then we compound all of these things and have a much more potentially dangerous situation. The result of these pilot studies was interesting. After all we only had eight people, and they were all "cup" winners in terms of their ability as racing drivers. One of them could consume three-quarters of a bottle of whiskey in an evening, and even on him impairment was evident at .08 per cent. In the others it was evident at levels down to .04 per cent. So introducing this factor of speed, we find a new dimension—for scientists that is—in this question of drinking and driving, which indicates that the level as proposed in this legislation is not too low a level but rather that subsequent research may well show that it may be too high, that in a majority of drivers, impairment may well be evident at levels of .05 per cent. However there needs to be much more research on the topic before a statement of that kind can be supported. But in view of the preliminary results of this pilot study, I feel now that .08 per cent is not too high a level to set for the kind of legislation you gentlemen are considering.

I thank you very much for the opportunity of making this short presentation this morning. I will endeavour to answer any questions that you might care to ask.

The CHAIRMAN: Thank you very much, Dr. Smith.

Mr. Tolmie has his hand up for the first question. If other members will indicate I will call them in the order in which I notice them.

Mr. TOLMIE: Dr. Smith, I think all of us realize there has been a continuing feud for years between yourself and other medical specialists and Professor Rabinowitch. When he gave his evidence he kept reiterating one point. What he said, in effect, was that with a specialist's knowledge in metabolism he was the best versed in this particular field. I gathered from his explanations that all other medical doctors were not as well qualified because he had this special field. He seemed to emphasize the point that there were other doctors involved, pathologists and other specialists, but that in addition to this special field he had worked with diabetes which gave him a special category, a special position. Therefore, his argument was that if that is so, then his evidence has more weight and he should be listened to more than other competing specialists. I would like to get your view on that as a doctor.

Mr. SMITH: Well, I am one of the people to whom he refers because my doctorate is not a medical degree. I am a social professor of pharmacology. I studied the action of drugs, having worked in this field now for 25 years, having

published a number of scientific studies in the field, and I am continuing in the front line, as it were, the research in this field. When Professor Rabinowitch has been approached, as he has many times to appear with fellow scientists in this field, he has declined. For example, as chairman of the meeting of the Second International Conference on Alcohol and Road Traffic, which took place in Toronto in 1952, I gave him six months' advance notice of the meeting and I gave him a choice of three dates on which he could come and present his views and discuss this thing with fellow scientists from all over the world. He declined this invitation. In addition, you have the medical bodies, the American Medical Association, the Canadian Medical Association, the British Medical Association, all indicating that certain concentrations of alcohol should be accepted as indicating impairment in drivers.

In the most recent issue of a booklet of the British Medical Association, copies of which I think were made available to this Committee, their views are outlined and they come out in favour of legislation which would call for a .08 rule. It seems to me, on the one hand, we have Professor Rabinowitch and, on the other hand, all of those who have seriously considered this matter from a number of countries all over the world who hold quite contrary views.

Mr. TOLMIE: That was, of course, my reaction. He seemed to be clinging to this one special distinction and I wanted to know briefly whether a specialist in metabolism was better qualified than a specialist in, say, pharmacology.

Mr. SMITH: Well, metabolism is one phase of the study of the effects of drugs on a person; it has to do with the handling of the drug by the body. Pharmacology also involves the reaction of the drug on the person. So from that narrow point of view that he makes, if anything, the pharmacologist should be better qualified.

Mr. TOLMIE: I can see the cleavage of opinion there but I wanted to get an answer. A defence counsel appeared before us a number of weeks ago but I cannot recall his name. He produced what to me was rather astounding evidence to the effect that a very, very small percentage of accidents, including fatal accidents, are caused by drivers who drink, but that a great percentage of accidents are caused by lack of care by the individual and this has been reinforced by many magistrates with whom I have talked. This, to me, was a rather shattering piece of evidence, if it is true. Evidently, he got statistics from the police department and also from the Attorney General's department. If this thesis of his is so, then the breathalyzer test and all this argument about it loses some of its urgency. What is your comment on that?

Mr. SMITH: At a time when efficient statistics in the Department of Transport indicated that one per cent of accidents involved a drinking driver I did a study in Toronto in 1950, where we actually surveyed all of the drivers involved in personal injury accidents in a three month period, and we found 15 per cent of the drivers involved in accidents had sufficient alcohol in their body to have a bearing on the accidents.

The point I am making is that if official statistics only reflect the kind of investigative work that is done, and the investigative work on this aspect of things is far from complete, to get the proper relationships here one must go to the studies that are done, the actual surveys, where you find the alcohol question in very high relief indeed.

It depends too on the type of accident that you are studying. For example, one study in Westchester county in New York state revealed that of the drivers involved in single vehicle accidents who were killed, 83 per cent of them had .05 per cent alcohol or more in their system. Recent studies from California and some other places where they have had a complete survey of those killed in traffic accidents and where they have done the blood alcohol levels in all of the drivers killed, show upwards of 50 per cent who have .1 per cent or more alcohol in their blood. So these specific studies where they have reviewed all of the data show a substantially higher proportion of drivers who have been driving at these levels associated with impairment than do the official statistics. I think in this respect official statistics are just lacking in complete data.

Mr. TOLMIE: What you are saying, in effect, is that the percentage is higher than is perhaps reflected in the evidence given by the defence counsel because this was just evidence he obtained from the Attorney General's department without seeing the actual drinking and driving. But as I say, the percentage shown was so small, and even the percentage you mention was so small, that it surprised me. This, of course, does not mean that we have to stop this particular attack, because it is just one attack of many attacks, but I think it was very revealing and it might be of interest if a concentrated study could be made in the same connection to show exactly what percentage of accidents are caused by drivers who drink, because if this impression is allowed to gain acceptance that, after all if it was as bad as people made it out to be, then our work and your work in connection with the breathalyzer test is going to be in jeopardy.

Mr. SMITH: It is much more difficult. The only data that I have now, with reference to Ontario, is that out of the approximately 1100 traffic deaths, we had levels of .1 per cent or more in, I think it was, about 230 of them in our laboratory alone on the deceased drivers. We are not getting all of the blood alcohol levels in our laboratory. Some of these are done in the laboratories of the regional pathologists and others around the province. I do not really have an estimate of what proportion of the total deceased drivers we are getting in our own laboratory, but whatever that proportion is we have this kind of data which indicated we have these findings on what must be about 20 per cent of the total. How many more there are, I do not know.

Mr. TOLMIE: I have just one more short question. We hear so many conflicting reports about the accuracy of the breathalyzer test that I think sometimes we become involved in an argument as to its efficiency. Assume for a moment that we do introduce it and make it compulsory, in what way will this help to decrease the number of accidents because of drinking drivers. In other words, what deterrent effect has it? It is not quite clear to me as yet how having a scientific test is going to prevent people from drinking and driving and getting into accidents?

Mr. SMITH: I think we have to look at what is happening in some other countries in this regard. I believe there are data in Sweden, where they have compulsory testing, on this point. There it is blood testing, but it does not matter. Their accident rates have stayed down over the years. It is difficult to relate this to our conditions because there are so many other factors involved. It seemed to me, however, that if this would apply in a very definite way to people then of necessity they would have to change their drinking and driving habits.

Mr. TOLMIE: You mean they would drink less because they would be afraid they might have to take a test.

Mr. SMITH: I do not think that necessarily they would drink less but they would make a choice before they went to the party as to who would do the driving on the way home, or make other arrangements.

Mr. TOLMIE: Because they might have to take an automatic test and lose their driving privileges.

Mr. SMITH: We get quite an effect in this way around Christmas time in Metropolitan Toronto, where they have spot checks. The actual rate goes away down during the period the spot checks are publicized.

Mr. MATHER: May I ask a related question on this point. Is it not true that in the province of Ontario, where we have had the breathalyzer test for some years on a permissive basis, that there is an increased percentage in the number of suspected impaired drivers who refuse to take the breathalyzer test realizing that they do not have to do so, and that if we had a compulsory breathalyzer test, that type of sophisticated drinking driver, which represents I think the hard core of drinking drivers, would be affected by being aware of the fact that they would face a mandatory test where they do not now, and therefore they would probably drink less or drive less when they are drinking?

Mr. SMITH: Yes, the percentage of refusals to take the test has increased from approximately 7 per cent in the year in which we first introduced it, 1958, to approximately 25 per cent. It was 26 per cent last year. I did one study on those who refused in Metropolitan Toronto, and many of those who refused are second and third offenders. These, as you say, are the hard core of the problem that we really want to deal with.

Mr. AIKEN: Mr. Chairman, I have a question along the same lines. Do you know of any test that has been conducted or survey made to determine the number of people who drive when drinking completely outside of the question of accidents.

Mr. SMITH: Yes, there are two studies that bear on this point. One was in Toronto in 1952, in which the drivers involved in accidents were compared with drivers passing the same corner not involved in accidents and the alcohol levels in them. In the drivers not involved in accidents the percentage of alcohol, in proportion to those who were drinking, was reasonably low. Another was the Grand Rapids study, which was done on the same date, and ordinary drivers compared to those involved in accidents indicated about the same proportion. I am trying to find what that was. That was those involved in accidents, but the question was what percentage of the drivers driving had alcohol in their system?

Mr. PHILIP FARMER (*Secretary-General, Canadian Highway Safety Council*): I am sorry for speaking up, Mr. Chairman, but I just wondered if this Committee has studied the Grand Rapids survey? These figures are available in this survey. The Canadian Highway Safety Council could make them available to this Committee, if it is desired. They showed something like 20 per cent of all people and drivers involved in accidents had been drinking. Perhaps that was not your specific question.

The CHAIRMAN: If copies could be supplied of this information we could make it an Appendix to the proceedings in your hearing on Thursday.

Mr. FARMER: I am sorry that I must answer your question this way.

Mr. SMITH: Both these studies show a higher proportion of drivers having alcohol were involved in accidents and this varied with alcohol levels. For example, there were twice as many drivers who had .06 in their blood involved in accidents as were present in the non-accident group. There were 67 times the number in the accident group who had .1 per cent alcohol as were present in the non-accident group—this was the Grand Rapids study—and there were 25 times as many in the accident group who had .15 per cent alcohol as were in the non-accident group. This was generally the direction of things in the Toronto study, showing that, depending on the alcohol level there, there was a tendency to select more accidents as the alcohol level increases. These figures give sort of the relative hazards of driving with various concentrations. I am sorry that is the only way I could answer your question.

Mr. AIKEN: I think you have answered my question. The point that I am trying to determine is this. Suppose a survey was made about the number of persons involved in accidents who wore eye glasses; it might show up to be 50 per cent. If you took the average population you might also find the same result, that 50 per cent of fatigued drivers wore eye glasses, and that would be no proof or indication that people wearing eye glasses were more prone to accidents than applying this method to the question of drinking drivers. If there is a large percentage of drinking drivers on the highway, then perhaps the figures showing that a lot of them are in accidents would not give a fair result. This was the reason for my question.

Mr. SMITH: There was a study that I did in 1950, which is still quoted on this point, which shows a relationship between the incidence of driving errors and blood alcohol level. In other words, as the alcohol level increases the proportion of drivers making errors which subsequently involve them in accidents increases; this can be plotted against alcohol levels, and these studies show that alcohol becomes an important factor in the accident at the level of .03 to .05 per cent. This is a study of accidents occurring as they do in real life—these people are not under tests as they drive—and pinpointing those levels of concentration as meaningful with respect to safety as far as alcohol is concerned. So that when you have this relationship then, an increasing relationship as the concentration goes up, it is like any other measurement as it were on cause and effect in the action of a drug, and strangely enough the relationship found here in these traffic studies follows the same pattern one would expect from drug studies—for example, the lowering of blood sugar with a dose of insulin.

Mr. AIKEN: I myself have no reasonable doubt at all but it is one matter that is occasionally raised and I am glad to have something on the record.

There was one other matter that I am a little vague about. You listed four suggestions for amendments to the bill. I rather took it that these came from Dr. Rabinowitch. Was I right in that assumption?

Mr. SMITH: Yes. When he returned on his way through Toronto after appearing before this Committee, he phoned me and mentioned these four points. I think I had made these four points also in my initial appearance before

the Committee, that we are really not dealing with venous blood when we are dealing with the breathalyzer; we are dealing with arterial blood and that two tests are necessary. If it is spelled out "a test", then you lay the basis for the possibility of error. Any measurement that is done needs to be verified; in the verification you remove the remote possibility of effect due to regurgitation, and allow for conformation of the readings through blood and urine as well as through breath. I think I had made the point on the urine test—I do not know what time limits are going to go into this suggestion of the Committee—that with a urine sample we can obtain information as to whether the alcohol level was increasing or decreasing in the period prior to the taking of the breath test; this gives valuable information because we are really concerned I suppose with what happened at the time of arrest rather than at the time of testing. Depending upon the wording of the bill that you finalize, this may well be important. It may be something that needs to be dealt with in the investigative stages rather than being dealt with in terms of hypothetical questions in court.

Mr. AIKEN: Then there is the last one, the deletion of the term "impairment", I believe.

Mr. SMITH: Well here, as you know, he takes the view that biological variation being what it is you cannot say "impairment" in all individuals. But I think the technical data is such that the chances for a person not being impaired at .08 are so small that you need not consider them. I think that is as far as any scientist can really go.

Mr. AIKEN: Then you would say, in effect, that you and Dr. Rabinowitch agree at least on these four essentials in the bill?

Mr. SMITH: Many discussions have been resolved in this way.

Mr. RYAN: Would you prefer a word such as "affected" to "impaired"?

Mr. SMITH: Well, my answer to this is not really on scientific grounds. I feel that scientifically one can say that at .08 per cent drivers are impaired. But I have seen so much of the contest which goes on in court when you label a man impaired—it is as though you were challenging his manhood—that if you take out this element of the offence then you put it in the same light as any other regulation where he and his person are being challenged. But this is something that he must abide by, and I feel that we are more likely to get compliance with the law if you avoid such terms.

Mr. RYAN: Even the term "affected".

Mr. SMITH: "Affected" is softening it. It would be preferable in this sense to "impaired" if one must use a term.

Mr. MATHER: Well, Mr. Chairman, my Bill, No. C-87, which is before us, calls for an amendment to the Criminal Code to provide for a mandatory test for impaired driving on the basis of .08 per cent of alcohol in the blood as determined by the use of the breathalyzer machine. The bill states that the presence of that amount of alcohol would become conclusive evidence of impairment. Just before I ask my question let me say that when Dr. Ward Smith and Professor Rabinowitch agree on the points that have been indicated, as a layman in drafting this bill, I am quite prepared to agree on those points also.

In relation to the last point of impairment, we had a delegation representing the Canadian Bar Association before us not long ago, and they had a resolution which also favoured the establishment of a mandatory test and the .08 per cent. But they said whereas my bill calls for that level of alcohol in the blood being taken as conclusive evidence of impairment, they, instead of that, would prefer that .08 per cent be established at a level which, at that level or above it, it would be against the law to drive. I then indicated, and I do now, that I would be quite happy to accept their proposal rather than my own in the subject matter of this bill. Would you not think that perhaps a better basis for determining impairment would be by simply stating that a person who has .08 per cent alcohol in his blood is not necessarily impaired but he is driving against the law when he has that percentage.

Mr. SMITH: Yes, I would certainly agree.

Mr. MATHER: I would agree with that too. As I said, I agree with the points that you and the Professor have apparently discussed and come to agreement on also.

Mr. RYAN: I take it, Dr. Smith, that this bill should specifically state arterial blood in place of venous blood.

Mr. SMITH: I think if you just say blood and not refer to arterial or venous. When you say breathalyzer it implies arterial blood.

Mr. RYAN: I do not see where it says breathalyzer in the bill.

Mr. SMITH: I mean breath tests.

Mr. RYAN: That is, section 223, clause 3, would read: "for the purposes of section 222, the blood level of alcohol shall be determined by an analysis of breath only"; it does not say how, though. Does it mean here breathalyzer?

Mr. SMITH: No, and I think this is wise too because while today we are using breathalizers as being the best instrumentation for the purpose, there are studies under way using other techniques—a gas chromatography, for example, which may offer all of the advantages and some additional ones to the breathalyzer. Besides the breathalyzer is a commercial instrument and it would be most unwise to specify a particular commercial instrument in any legislation. I am sure we would not want to put ourselves in that position. I know it is a difficult matter to deal with but it seems to me that if such a modification of the Criminal Code is introduced then we must be very careful about the kind of equipment that is used, the way that it is used, the standards of confidence of the operator that will use it and all of these other matters that are going to ensure close analytical controls.

When you make available to the accused a sample of the breath that has been tested, you in part do this, and when you make two tests mandatory, you in part do this, because of necessity in any measurement there are small variations and the operator of the test must be knowledgeable enough to deal with the kind of a variation that normally occurs. If he is consistently getting exactly the same answer then one knows that this is not a proper recording of things as they occur in real life. You have these two automatic controls on the whole conduct of the analyses. This may be as far as one can go federally. I assure you, however, that as far as we are concerned provincially, our controls go much further than this.

Mr. RYAN: You seem to have backed away from the term "arterial" blood as well as from the term "venous" blood.

Mr. SMITH: No, arterial blood would be fine.

Mr. RYAN: Is lung blood any better?

Mr. SMITH: "Arterial" would be fine, and this does express the relationship between breath and the kind of blood that we are dealing with.

Mr. RYAN: Maybe "arterial" should be modified in some way. I wonder if you would mind describing for us what happens when the venous blood goes back to the heart; from there through the lungs to the head.

Mr. SMITH: The venous blood comes back to the right side of the heart where it is pumped to the lungs; there it becomes arterial because it now picks up oxygen and gives off carbon dioxide and other waste products. It goes from there back to the more powerful side of the heart, the left side of the heart, where it is pumped out to the brain and all of the tissues. So you have the blood flowing through the lung which is just about to be delivered to the brain where the alcohol in that blood has its effect on the brain. It is in very close relationship, as close as one can possibly get—and this blood is in fact, arterial.

Mr. RYAN: I take it from what you are saying that very little if any impurity occurs in the arterial blood, even though it has to go back to the heart and be pumped up to the brain.

Mr. SMITH: There is very little change in it from the time it leaves the lung until the time it goes to the heart and to the brain.

Mr. RYAN: Would it be a change not worth worrying about?

Mr. SMITH: As a change it is inconsequential, in terms that we are thinking of here.

Mr. RYAN: So arterial blood, substantially, would be the way you spell it out.

Mr. SMITH: Yes.

Mr. RYAN: You told us they puncture the lower lobe of the ear in Sweden and take the blood from there?

Mr. SMITH: Yes.

Mr. RYAN: I suppose that would be sort of half arterial and somewhat venous, would it?

Mr. SMITH: Yes. You have a delivery system to the tissues, which is arterial, breaking up into smaller and smaller vessels which eventually become small enough to be called capillaries, and you get the distribution of alcohol from capillaries to tissues. Then you have the collecting mechanism at the other end of the capillary which join and become larger and larger vessels which become known as veins. So, as you say, the capillaries are midway between artery and vein and the correlation there between capillary blood and lung air is reasonably good. It is strange to think of the difficulties if you spell out arterial blood and then suggest that blood or urine samples could be used

for confirmation because one cannot obtain arterial blood samples—the procedure is much too painful. But the urine tests are an expression of arterial blood because it is the arteries that supply the kidney. This question of the confirmatory tests bothers me a bit. If you do spell out arterial blood then this would prevent the use of a blood test for confirmatory analysis. This may be the only way open to the accused to get his own sample under some conditions that exist in the hinterland of the country.

Mr. RYAN: I think in the legislation it could be spelled out on that exceptional basis in another paragraph or clause.

Mr. SMITH: Yes, it could.

Mr. RYAN: If there was sufficient doubt from a blood test then that test would be invalidated.

Mr. SMITH: That is right.

Mr. RYAN: What about the Swedish test? How many parts per thousand in the blood would be necessary to convict?

Mr. SMITH: In Sweden, at one level of the conviction, which represents a fine and a loss of licence for, I think, three months or so, the level is .05. For imprisonment and loss of licence for life or until they can show cause the level is .15. In Norway, they have the one level of .05, which they have had since 1923.

Mr. RYAN: Is that an ear test, too?

Mr. SMITH: This is taken on the ear prick blood. They take six samples, which all are sent to the central laboratory of the country. The samples are analyzed by two different methods, the results correlated, and whatever benefit in the analysis needs to be given to the accused is given to him there in terms of presenting the results of these analyses. It is very carefully controlled analyses throughout. We need to approach this careful control of analyses if we are going to do this sort of thing.

Mr. RYAN: I take it you feel the breathalyzer is a lot more practical?

Mr. SMITH: It is far more practical and, in my opinion, as it is used, and the way we use it in Ontario, and the controls that we place on its use, is far more accurate in the sense that nothing can go wrong with it, if one follows the prescribed method of operation. If something does go wrong, one will see it immediately. Unfortunately, I cannot say the same for blood tests as done through many of the laboratories in this country and in others. There are too many instances that have been brought to my attention where the results obtained by these methods do not agree with the amounts put in these samples. We have actually put certain amounts of alcohol in samples and sent them out to laboratories as blind tests and we got the answers back. In some cases, these are not very good. We have done this in Ontario and our results are within .01 per cent of what they should be, but it is not necessarily true in other jurisdictions.

Mr. WAHN: Dr. Smith, as I understand it, the breath tests imply the testing of arterial blood. You mentioned that it would not be practicable to take arterial blood for the purpose of a confirmatory blood test. Does that mean that you are taking venous blood for the purpose of blood tests?

Mr. SMITH: Yes, you would be.

Mr. WAHN: You are not testing the same things then?

Mr. SMITH: You are not really testing the same things.

Mr. WAHN: Then, is this a weakness in the confirmatory tests?

Mr. SMITH: You might say in a nit picking sense, yes, but in practical terms we are doing analyses on these people usually long after they have finished their drinking, usually long after the major portion of the alcohol has been absorbed, and under these conditions there is essential agreement between the alcohol and venous blood and in the breath or arterial blood. So it is not really a practical problem but one that in terminology is semantics, which one should be aware of.

Mr. WAHN: In what type of blood is the alcohol level likely to be higher, in the arterial blood or the venous blood, if you took these samples at the same time?

Mr. SMITH: Where there is a difference this will be in the early stages after taking alcohol, and the arterial blood under those circumstances can be higher, but it takes very rigorous drinking conditions to demonstrate the difference. In other words, one has to take a mickey of whiskey and have the tests done in about 15 minutes after he has finished the whiskey to demonstrate a difference.

Mr. WAHN: Where they take the blood from the ear in the Swedish test is this arterial blood or venous blood?

Mr. SMITH: Well, it is midway between the two; it tends to parallel the arterial blood rather than the venous blood.

Mr. WAHN: You mentioned that in order to obtain accuracy you must be careful with regard to the instruments used and also that the technicians must be skilled. Could you estimate with any degree of accuracy to what proportion of the Canadian population these instruments and skilled technicians are available at the present time?

Mr. SMITH: They are available to a limited extent in Nova Scotia and to larger extent in New Brunswick. I do not know the situation in Newfoundland; I think possibly it is non-existent. I do not know of an instrument being used in Quebec at the present time in practical work. The coverage is fairly complete in Ontario; we have 55 instruments and 350 trained operators. I believe there are a few instruments in Manitoba. The coverage in Saskatchewan is fairly complete. I think the coverage in Alberta is only in the Edmonton area, and coverage in the Vancouver area of British Columbia and it is extending throughout the province because of some recent legislation that they have. These facilities throughout the country could be extended very readily to take care of the problem. I feel we are quite ready for it in Ontario.

Mr. WAHN: Thank you, Mr. Chairman.

Mr. TOLMIE: I believe there is a large body of opinion which is opposed to the idea of police officers indiscriminately stopping a motorist and forcing the motorist to have a compulsory breathalyzer test. Do you think it would be preferable to have the test mandatory only as a result of an accident or perhaps for some traffic violation? In other words, should the policeman be allowed arbitrarily to apprehend any motorist and to force a breathalyzer test on him without more than perhaps a reasonable idea that he is impaired?

Mr. SMITH: I think this question will resolve itself in usage. I should think the overzealous officer who stops too many people without cause would find himself in great difficulty in time. It seems to me, however, that where there is something in the driving, an improper turn, or other infraction, and the smell of an alcoholic beverage on the breath, there are probably reasonable grounds to request a test, in addition to the fact that in other cases there may have been an accident. It seems to me that one great deterrent would be the properly scheduled spot checks that are occasionally done, not that these need be very widespread, but the fact that they can be done would have a tremendous deterrent effect.

Mr. TOLMIE: I think this is the crux of the whole matter. I believe if you had been drinking and had just left a party, just the fact that perhaps you might be stopped indiscriminately and be forced to take a test, would have a most severe deterrent effect.

Mr. SMITH: In answer to your question, I would not like to see a situation where spot checks would be eliminated. I would like to see the possibility of these for the deterrent value that they undoubtedly will have. I think as a society we can manage this somehow without undue interference with the average motorist.

The CHAIRMAN: What is the procedure followed by the Toronto Metropolitan police to prevent accidents around the festive season? A man may be driving his car and when he comes to a stop light a policeman puts his head in the window. You could probably tell us what happens from then on.

Mr. SMITH: As I understand it, they do set up locations at unspecified places around the city and stop the cars as they are going by with a very cursory check on brakes, lights, driver's licence and so on. In the course of this, they also have a watchful eye for any evidence of the effects of alcohol. In the course of this they find a number of people who are driving without a licence; perhaps a criminal is using the road; the number of charges for impaired driving increase, and when they are publicized in the daily paper, the accident rate goes down during these checks. There is a general check, including the possible effects of alcohol.

Mr. WAHN: I have one other question. Did Dr. Ward Smith not mention that in some cases blood tests do not agree with the actual facts. If so, this would tend to lessen the value again of the confirmatory blood test. I believe he said that in certain areas he had found that in practice the bloods tests were in error.

Mr. SMITH: There again, if blood tests or any other tests are used to confirm the breath tests, I would like to see the same kind of controls on the way in which that analysis was done and by whom. If these controls were exercised, then there will be essential agreement.

Mr. WAHN: I gather there is not the same problem with regard to urine tests.

Mr. SMITH: The same problem obtains with respect to the analysis of urine.

Mr. WAHN: Does it?

Mr. SMITH: Yes.

Mr. WAHN: It could be out just as much as the blood test?

Mr. SMITH: It depends upon the methods used and the person using the methods. This is what this chapter in "Forensic Science" is all about. I reviewed the various things that can occur in the analysis for alcohol both by using breath, blood and urine and outlined the various methods which have been shown to be acceptable through usage over a number of years and the controls that are necessary on these analyses if they are to be acceptable.

There is an analytical problem here. I know it is difficult to ensure federally this kind of control in the provinces. There are already discussions beginning as to how the various laboratory people across the country will meet this problem. I am sure this can be done by agreement with those concerned in the analytical programs of the provinces.

Mr. WAHN: But at the present time at any rate there can be errors in blood tests and in urine tests. Could there be errors also in breath tests, or is there something inherently more accurate in breath testing than there is in blood testing and urine testing?

Mr. SMITH: Any analysis is subject to inaccuracy if it is improperly controlled, but where you specify the controls it is possible to ensure accuracy. We have done this with our breath testing, our blood and urine testing in the province of Ontario.

Mr. WAHN: Is it easier in any one of these tests to obtain accuracy than in another?

Mr. SMITH: It is easier to obtain accuracy in a breath test than it is in a blood test or a urine test.

Mr. WAHN: From the theoretical considerations involved it is easier to ensure accuracy with the breath test?

Mr. SMITH: Than in either of the other two.

Mr. WAHN: Either of the other two.

Mr. SMITH: First, that the sample is injected directly into the instrument so you do not have the problem of contamination of the sample. Second, that the sample is uniform once you establish the conditions for taking the sample.

This is a minor point, but in taking a portion of a blood sample for analysis, one could have a different distribution of blood cells and food portions of the blood, which can affect the analysis to a small extent but, nevertheless, there is a variation there which is not present in the breath test.

Third, the instrument is calibrated so that the relationships in the instrument are already fixed, and as long as one employs a controlled analysis, where you have a definite amount of alcohol and water, and the air put through it into the instrument each time, it should read a certain reading—so you are checking your instrument with each analysis that is done, and this immediate check gives you tremendous stability with a breathalyzer. With our blood test work and urine test work we also employ these standards. We run these standards through with each set of analysis. As long as that sort of thing is done one should

see when anything has gone wrong in this. I believe that the breath test is capable of the greatest control and the least likelihood of error than even the blood test.

Mr. RYAN: Mr. Chairman, suppose three, four or five men were tested in the same evening by the one machine, would there be any possibility of one test affecting the other? How does this work?

Mr. SMITH: No. There is a stage in the analysis where any residue of the previous sample is flushed out of the machine before a second sample is put in. For example, in our procedure we first run a sample of room air to assure ourselves that there is no contamination anywhere in the instrument or in the ampoule that is used or any portion of the test, and the reading on it should be less than .005. Then we run a standard which, under the conditions we run it, should read 1.5 per cent. This is a check on the entire workings of the instrument, discalibration incidentally, the reactivity of the material in the ampoule, so that all of this is behaving properly. Then there is a flushing of the instrument with room air; then the sample of the breath of the accused is put through it, flushing and then a second sample of the accused's breath, all using the same ampoule. There is no carry over from the standard to the sample of the accused's breath. So that is all taken care of with each analysis that is run.

Mr. RYAN: Is there any setting on the machine that applies specifically to the person being tested?

Mr. SMITH: Yes. We use a mouth piece, a little plastic tube that is attached to the tube entering the instrument, and a fresh one of these is given to each person. These can be cleaned in a solution that would remove any bacteria, contamination and so forth, then dried and a fresh one used for each person. There is no contamination of bacteria, for example, from one person to the next.

Mr. RYAN: A person breathing into a machine or this type of thing would be a lot more scientific and accurate than somebody breathing into a policeman's face to determine impairment?

Mr. SMITH: Oh, yes.

The CHAIRMAN: If there are no further questions, thank you very much indeed, Dr. Smith; you were most generous with your time. We appreciate it very much.

Is it agreed that "Methods of Forensic Science", Volume 4, by H. Ward Smith, the Attorney General's Laboratory, Toronto, Canada, and particularly the passages therein marked by Dr. Smith be an exhibit.

Some hon. MEMBERS: Agreed.

Mr. AIKEN: Mr. Chairman, does this mean that the whole document will be reproduced?

The CHAIRMAN: No. It simply will be an exhibit. It will be here available or anybody to read but it will not be printed in the proceedings.

Mr. AIKEN: This is why I raised the question. If it is made an appendix, it will have to be printed in full.

The CHAIRMAN: We will make it an exhibit. If there is no further business the meeting stands adjourned. We will meet on Thursday at eleven o'clock when our friend, Mr. Farmer, will be here as a witness, together with others, I take it.

Mr. FARMER: I will be alone, sir.

The CHAIRMAN: The meeting is adjourned.

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The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 18

THURSDAY, NOVEMBER 24, 1966

Respecting the subject-matter of

Bill C-26, An Act to Amend the Criminal Code (Safety
Devices for Automotive Vehicles)

Bill C-49, An Act to Amend the Criminal Code (Dangerous
Motor Vehicles)

Notices of Motion Nos. 26, 31, and 38

and

Bill C-87, An Act to Amend the Criminal Code (Impaired Driving)

WITNESSES:

From the Canadian Highway Safety Council: Mr. Philip J. Farmer,
Executive Director; and Mr. Yves Mondoux, Assistant Director of
Public Relations.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1966

UNIVERSITY OF OTTAWA

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest
and Messrs.

Addison,*
Aiken,
Choquette,
Fulton,
Goyer,
Grafftey,
Guay,
Honey,

Laflamme,
Latulippe,
MacEwan,
Mather,
McCleave,
McQuaid,
Nielsen,

Otto,
Ryan,
Scott (*Danforth*),
Tolmie,
Trudeau,
Wahn,
Woolliams—24.

(Quorum 10)

*Replaced Mr. Chrétien, Wednesday, November 23, 1966.

Timothy D. Ray,
Clerk of the Committee.

ORDER OF REFERENCE.

WEDNESDAY, November 23, 1966.

Ordered,—That the name of Mr. Addison be substituted for that of Mr. Chrétien on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

THURSDAY, November 24, 1966.
(22)

The Standing Committee on Justice and Legal Affairs met this day at 11.25 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Addison, Cameron (*High Park*), Choquette, Guay, Honey, Latulippe, Mather, McCleave, Ryan, Tolmie (10).

In attendance: From the Canadian Highway Safety Council: Mr. Philip J. Farmer, Executive Director; and Mr. Yves Mondoux, Assistant Director of Public Relations.

The Chairman introduced Mr. Farmer and Mr. Mondoux. Mr. Farmer read a brief on behalf of the Canadian Highway Safety Council re Bills C-26, C-49. Following this he made some comments on previous evidence given before the Committee.

Mr. McCleave raised a question of privilege relating to Mr. Farmer's comments on evidence given by Mr. Heward Grafftey, M.P.

Mr. Farmer then made some comments on Bill C-87.

*Agreed,—*That a prepared statement by the Canadian Highway Safety Council entitled *Bill C-87, Alcohol and Traffic Safety* be appended to today's proceedings (*See Appendix 11*).

Mr. Farmer read a reprinted article entitled *Alcoholism and Traffic Fatalities: Study in Futility* by Melvin L. Selzer and Sue Weiss from the *American Journal of Psychiatry*, Vol. 122, No. 7, January, 1966.

Following comments by Mr. Farmer on previous evidence by Mr. Bazos,

*Agreed,—*That a letter from Mr. C. E. Laybourn, Director of Traffic Safety, Ontario Department of Transport be made an exhibit (*See Exhibit 15*).

*Agreed,—*That *Fatal Motor Vehicle Traffic Accidents on the King's Highway only, May—1966* by the Planning Branch, Traffic and Planning Studies Section, Ontario Department of Highways be made an exhibit (*See Exhibit 16*).

After questioning by the Committee, Mr. Cameron thanked Messrs. Farmer and Mondoux for their excellent brief and other material they had provided the Committee with.

At 1.10 p.m. the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, November 24, 1966

The CHAIRMAN: I am going to suggest that we ask Mr. Farmer of the Canadian Highway Safety Council and Mr. Mondoux who is here with him, to proceed with their presentations. After you have concluded the members will ask you questions.

Mr. PHILIP J. FARMER (*Executive Director, Canadian Highway Safety Council*): Thank you Mr. Chairman. With your permission, we will go ahead with our formal brief as it relates particularly to Bills No. C-26 and C-49. I would like also Mr. Chairman, to make some comment on previous evidence that has been presented to this committee on these two bills. Also if time permits, I would like to submit some supporting evidence on Bill No. C-87, particularly in view of the testimony given on Tuesday last by Dr. H. Ward Smith.

Mr. Chairman and gentlemen, the Canadian Highway Safety Council is grateful for the opportunity of appearing before this committee today.

The Canadian Highway Safety Council is the national co-ordinating body in highway safety.

The Council was formed in 1955 in Ottawa following a national conference attended by more than 400 prominent Canadian citizens interested in what promised to be the country's major problem, traffic accidents. The first General Chairman of the Council was the Honourable Brooke Claxton.

The Council groups together and enjoys the full co-operation of the federal, provincial and local governments, business, industry, labour, provincial safety councils, associations and social groups that otherwise would have no common meeting ground in the field of safety.

The Council is represented on the committee of the Canadian Government Specifications Board currently drafting automobile safety standards. At the request of the Board the Council has written two draft sections of the Code.

The Council is also a member of the Canadian Standards Association committees on automobile tires, seat belts, safety helmets for motorcyclists, lighting or commercial vehicles, directional signals for motor transport and advance warning devices. The Council chairs two of the committees.

Coming straight to the point, the Council wishes to go on record as favouring and supporting the establishment of minimum safety performance standards for all automobiles manufactured and/or imported for sale in Canada. With regard to the need for specific safety devices in cars, for the optimum safety of occupants, Council records show resolutions and recommendations dating back as far as 1956 on such matters as disc brakes, emergency brake performance, win braking systems, banning of illegal braking fluids, seat belts, combined lap and shoulder belts, safety door locks, lights, windshield washers, tires, car trailer latches and car safety standards generally.

The Council feels that, for the sake of uniformity, efficiency and economics, these safety standards should be North American in scope.

Ideally these standards should be mandatory to eliminate the competitive aspect inherent in the voluntary inclusion of safety devices in cars. The constitutionality involved is, of course, a matter for the legal authorities.

Further, to avoid unnecessary duplication in automotive research, which is costly, the council feels that the development of standards should be a co-operative effort between governments, industry and independent research groups.

In this connection I quote Dr. William Haddon, Jr., recently appointed by President Johnson, Administrator of the new Traffic Safety Agency set up by the United States government to implement the new Traffic Safety Act and who, by the way, already has been suggested among the experts to appear before this committee. Dr. Haddon said:

Issuing requirements for the auto industry to meet is not so simple. This will require the development, first, of performance tests, and, second, the reaching of a consensus as to the levels of performance which vehicles should meet.

I do not feel that our job is to do things in Washington or to control things from Washington any more than is necessary to see that the basic mission is accomplished.

As far as the industry is concerned, this means that we will be pushing for it to do its job, just as we will be pushing everyone else to do theirs. We will be successful to the extent to which others run with the ball.

It is obvious that close co-operation between governments, industry and separate research groups will be necessary.

In the event that a decision is made to cover automobile safety in the Criminal Code, the Council offers the following comments on Bills C-49 and C-26 being considered by this committee.

Bill C-49

1. This Bill should not be tied to section 221 of the Criminal Code, which deals with offences relating to the operation of a motor vehicle, inasmuch as the proposed subsection (5) is in no way related to the existing offences under that section.

2. Section 492 of the Criminal Code requires that a person charged with a criminal offence must be provided with sufficient detail of the circumstances of the alleged offence to give the accused reasonable opportunity to know with what he has been charged. The wording of subsection (5) is so general it seems to be in conflict with section 492.

3. It would be impossible to prosecute unless the bill was clarified to spell out what is intended as a minimum of safety for automobile construction so that comparison is possible to show a definite non-compliance beyond a reasonable doubt.

Bill C-26

1. This Bill should not be linked to section 226 of the Criminal Code which deals with offences relating to the ownership, or care, charge or control of a motor vehicle or vessel.

2. If the Bill is intended to cover motor vehicles manufactured in Canada, in the interest of public safety, it also should cover motor vehicles imported into Canada.

3. All but two of the safety devices listed will be standard equipment items in 1968 model automobiles manufactured in Canada. These safety devices are covered by the Canadian Government Specifications Board's Automotive Vehicle Safety Code.

4. Without specific minimum performance standards for safety devices, it would be difficult to assure public safety and difficult to show a definite non-compliance beyond a reasonable doubt.

There is no simple solution to Canada's highway accident problem. From 85 to 90 percent of traffic accidents result from driver errors. Statistics show that some of the more common errors are: Failing to yield the right-of-way; speed too fast for conditions; driving on the wrong side of the road; failing to stop at a through street; inattentive driving; cutting in; improper passing; improper turns; improper parking.

Approximately 29 percent of at-fault drivers in fatal accidents have previous accident or conviction records.

As the committee is aware, the Council supports Bill C-87 since alcohol is an important factor in traffic accidents.

To obtain optimum results the traffic accident problem must be attacked with a balanced program in four major areas: research; engineering; laws and enforcement; education and Public Information.

There are three phases to a traffic accident:

1. *The initiation phase*—Accident prevention is of the utmost importance at this time. This involves a myriad of factors evolving from the driver, the pedestrian, the vehicle and the highway.

2. *The brief interval of the crash*—Injuries depend on how well the impact forces have been anticipated by the designers of the vehicle and the highway.

3. *The clean-up phase*, This is a highly neglected field—Slow or inadequate emergency care of the injured can mean completely unnecessary death or disability and prolonged medical care.

A great deal has been said about blame for the lack of positive action on traffic safety.

In the New Testament John quotes Christ as having said, "He that is without sin among you, let him first cast the stone at her."

Using hindsight we all should have done more. By "we" I mean: safety councils; members of Parliament; automobile manufacturers; the medical profession; the legal profession. In fact, all Canadians must take some of the responsibility.

The point has been made that we need safer cars. The time has come to stop throwing stones and ask ourselves what can we do about it now, and what can we do in the future.

The overall problem of improving the crash worthiness of automobiles is sufficiently complex that various aspects have been isolated for concentrated study. These studies include:

1. Controlled collisions of actual automobiles to define the actual acceleration environment within the passenger compartment. However, the development

of human tolerance data, improved interiors and restraint systems by this means alone is not feasible.

2. Human responses and tolerance limits for the type of impact forces and accelerations that occur in automobile collisions are being investigated with cadavers and anthropomorphic dummies in a variety of sled tests.

The recent Stapp Car Crash Conference showed that these research studies which are now being carried out are extremely difficult and complex. They are complicated by the very necessity to use dummies and cadavers rather than live humans, and by system nonlinearities which preclude extrapolations and becloud interpretations of the test results.

Work is being done now to engineer computer programs to design automobile interiors and restraint systems. These programs can be only of limited use until the engineering and biomedical research programs mentioned above have been completed. The day is not too far distant when computer implemented designs of automobile interiors can be rated for safety before manufacture commences.

But that is still in the future! What can we do now?

Last year in Canada, 4,879 died in highway accidents, 148,814 were injured and there were 395,000 reported accidents.

Car safety devices will reduce the number and severity of injuries. However, they will not appreciably reduce the total number of accidents.

Statistics show that 27 per cent of those killed were pedestrians, and 73 per cent of the deaths were due to vehicle crashes.

The leading causes of fatal injuries sustained in the "second crash" were listed in two well known studies. By order of importance they were shown as: Cornell study—

- (1) ejection,
- (2) steering assembly,
- (3) instrument panel,
- (4) windshield,
- (5) door structures,
- (6) front corner post,
- (7) roof.

University of Michigan study—

- (1) ejection,
- (2) front door,
- (3) steering assembly,
- (4) instrument panel,
- (5) rear door or panel,
- (6) roof,
- (7) header.

Most safety experts agree that without the use of seat belts or the combination of seat belt and torso restraint many of the other automobile safety features will have limited effect.

A recent study in depth of 139 fatal accidents involving 177 deaths indicated the following possible survivability if the passenger had been using restraints: seat belt only 40 per cent; seat belt and shoulder belt, plus 13 per cent (or total

of 53 per cent); seat belt and double shoulder belt, plus 7 per cent (for a total of 60 per cent). It is indicated that 37 per cent would not have been saved, and 3 per cent were unknown.

While recognizing that these figures apply to a particular series of accidents, whether or not they represent the national average, we can translate the data into Canadian statistics after first deducting the pedestrian deaths. It is possible that the following lives might have been saved on Canadian highways in 1965 if restraints had been worn by drivers and passengers.

	Approximate Reduction in Death	
Use of seat belt only	29.2%	or 1,420 people
Use of seat and shoulder belt	plus 9.5%	plus 460 people
Use of seat and double shoulder belt	plus 5.1%	plus 250 people

There can be no question that the use of seat belt and torso restraints will make a significant reduction in the number and severity of injuries.

The introduction of the energy-absorbing steering column in 1967 and 1968 model cars will undoubtedly further reduce the number and severity of injuries. Of interest is the recent crash of a 1967 model car equipped with an energy-absorbing steering column. The car travelling at approximately 60 mph crashed into a stationary tractor trailer. The driver wearing a lap belt only, escaped with facial lacerations from flying glass and bruises to his chest and hips. While it is too early to report a major success, the result of this one incident is encouraging.

The new safety glass installed in 1966 model cars is also producing an encouraging reduction in injuries.

It also must be borne in mind that if all known safety devices were installed in new model cars to-day, it would take about 12 years to replace cars now on the highway.

Of major concern, is the fact that while seat belts were first included as standard equipment in 1964 model cars, only 30 per cent of Canadian cars are presently so equipped.

The fact that seat belts and torso restraint systems are installed in automobiles means little unless they are worn. It is estimated that seat belts are worn regularly by approximately 11 per cent of Canadian drivers and passengers. A recent survey of 566 automobile accident hospital cases revealed that while seat belts were available to 24 per cent, only 3 per cent of the victims were using the seat belt at the time of the accident. This is an actual Canadian survey.

Unfortunately there is no pill that we can take to give us instant safety. It is obvious that all phases of the accident problem—car safety design, accident prevention and emergency care—must be attacked with equal vigour.

To achieve the optimum result in highway safety is a large and difficult task. However, we know that accidents can be prevented and injuries reduced. To reach our goal will require the co-operation, dedication, energy and resources of governments, business and industry, the legal and medical professions, safety councils and all interested agencies.

It means all-out war on accidents. All Canadians must be involved.

Gentlemen, this was the formal presentation of the Canadian Highway Safety Council on Bills No. C-26 and C-49. With your permission, while we are still speaking on these two bills, the Council would like to take this opportunity to comment on certain testimony previously presented to this committee.

The CHAIRMAN: It is quite in order.

Mr. FARMER: Thank you Mr. Chairman. Proceedings and evidence No. 10 was a presentation by the Canadian Automobile Association. The Canadian Automobile Association posed the creation of a consultative council on highway safety. The Canadian Highway Safety Council submits that this would be a duplication of the functions of the council. The council is the national co-ordinating body in highway safety. It is a bilingual, non-profit, non-partisan, public service organization, supported by the federal government, provincial governments, business, industry, labour, national associations, provincial safety councils, service and social groups interested in highway safety.

The council has tabled with this committee copies of a report covering its varied activities. This is a report that will be available to the committee. The report will show that the formation of a consultative council on highway safety would duplicate the work done by the Canadian Highway Safety Council and fragment the safety effort. Naturally, I might add, that we welcome government support, particularly in the field of safety research.

Proceedings and evidence No. 4 was a presentation by Mr. Heward Grafftey. On page 81 the witness states, and I quote:

...I say, that the highway safety councils and the safety leagues have done a good job in terms of trying to advocate the building of better roads; they have done a good job in terms of cajoling the driver not to be a 'nut behind the wheel', but why do they refuse to discuss the building of safer automobiles?

The Canadian Highway Safety Council has made resolutions and recommendations on car safety devices dating as far back as 1956. These resolutions and recommendations have been supplemented by the presentation of papers, public information releases and campaigns. These facts are on record for all to see.

On page 81 again, the witness says, in effect, that the Canadian Highway Safety Council accepts silencing money, and in return refuses to talk about car safety. He also indicates that the council is the main reason that very little legislation has been passed by parliament.

This is a completely irresponsible statement which does grave harm to the safety movement. It is an insult to the thousands of all your workers who dedicate their time, money and energy to accident prevention. The council's position on car safety is clear, and it is on record. If this committee is interested, the council will receive 9.4 per cent of its 1966 budget from the motor vehicle manufacturers. The council will also receive 18.8 per cent of its budget from the federal government in 1966. Presumably the witness might also consider this hush money. The official policy of the Canadian Highway Safety Council is set by its executive committee. The executive committee members, 60 in number, receive no remuneration or expenses from the council; their services are voluntary. The committee is made up of representatives from the federal government, all provincial governments, business, industry, labour, national associations, provincial safety councils and service organizations. There are many prominent Canadian men and women serving the council. To suggest that the council is receiving bribes and is obstructing Parliament is a completely irresponsible statement.

We feel that Mr. Grafftey should either supply evidence to your committee or withdraw his statements.

On page 88 the witness states:

In the Canadian Highway Safety Council last week in Calgary—renowned government experts addressed the Council on the building of safer roads and renowned government experts addressed the council on the policing of drivers and on the educating of better drivers. Who addressed the Safety Council on the building of cars, or on the annual inspection of cars? Executives from the automobile industry. Where else, in modern society, would we let such a farce continue?

For the record, Mr. Chairman, Mr. Grafftey was invited to attend the Calgary conference but declined. This was unfortunate since it would have provided him with an excellent opportunity to contact the grass roots, the individuals and associations interested in safer cars, safer roads, safer drivers and to find out first hand what is being done. To set the record straight, the council always has endeavoured to have speakers and panelists, persons who are the most qualified on the particular subject being considered. The Calgary conference was no exception. On the subject of automobile safety the council endeavoured to obtain speakers knowledgeable on the subjects on which they were requested to speak. These speakers included Mr. S. E. Swallow, Director of Service with the Ford Motor Company of Canada and chairman of the council's motor vehicle safety committee; Mr. W. A. Woodcock, chief engineer of General Motors of Canada and chairman of the council's automotive engineering committee; Mr. R. B. Armstrong, assistant chief engineer, Body Components and Developments, Chrysler Corporation, Detroit, Michigan; M. J. Widman, Ford Research and Engineering Centre, Dearborn, Michigan; Mr. R. McMillen, director of Tire Development, Goodyear Tire and Rubber Co., and Mr. P. S. Meyer, General Motors Engineering staff, Warren, Michigan.

On the subject of alcohol and road traffic and the subject after the violation, the council had as speakers, His Hon. S. V. Legg, judge of the district court of Northern Alberta; Dean W. F. Bowker, Q.C. Dean of the faculty of law university of Alberta; Professor J. D. Taylor, assistant professor of Pharmacology, University of Alberta; Dr. H. Ward Smith, director of the Attorney General's Laboratory, Ontario; Magistrate R. V. Read, City of Calgary, and Mr. R. M. Anthony, Chief Crown Prosecutor, Department of the Attorney General, Alberta. Dean Bowker, Dr. Ward Smith and Mr. Anthony already have been witnesses for this committee.

Similarly, on the subject of roads the council had such experts as Monsieur Jacques Verreault, Deputy Minister of Transportation and Communications, Quebec; Mr. D. E. Campbell, Traffic Engineer, City of Calgary; Mr. B. M. Huffman, Traffic Engineer, City of Edmonton and president of the Edmonton Safety Council, and Mr. D. D. Kuchinski, Traffic Planning Engineer, Department of Highways, Alberta.

On the subject of education the council was fortunate to have such experts as Dr. R. E. Rees, Director of Special Services, Department of Education, Alberta; Dr. E. J. M. Church, Assistant Director of Curriculum, Department of Education, Alberta; Mr. Robert Warren, Superintendent of Schools, Calgary; Dr. J. W. Woodsworth, Head of the division of Educational Psychology, University of Calgary, and Dr. James Malfetti, Chairman of the Department of Health Education, Columbia University.

It is indeed unfortunate when the work of so many dedicated safety people can be undermined by incorrect statements.

I would like also Mr. Chairman to correct some statements in the Minutes of Proceedings and Evidence No. 4. At page 79 the witness stated that one million were injured in 1965, two-thirds permanently disabled. The correct figure should read 148,814 injured in highway accidents, one-third permanently disabled.

On page 80 it was stated:

...if the federal government orders the automobile industry to put into the automobile at the production stage already known scientifically proven safety features, we could immediately reduce this toll in accidents and injuries...

Corrected, this should be "known car safety devices will not appreciably reduce the number of traffic accidents". On the basis of normal production it would take 12 years to replace automobiles now on the road. There will be no dramatic overnight reduction in injuries if a law is passed.

On page 88 it was stated that 87 per cent of the death and injury producing accidents took place under 45 miles an hour. The correct statement should have been 87 per cent of traffic accidents and 45 per cent of traffic fatalities occur at speeds under 40 miles per hour.

The CHAIRMAN: Have you something you want to say, Mr. McCleave?

Mr. McCLEAVE: I just want to raise a question of privilege. I do not know if the witness advised Mr. Grafftey that he was going to quarrel with some of the statements that Mr. Grafftey apparently had made previously. I was not at that meeting so I do not know the merits of this particular issue at all. I did phone Mr. Grafftey's office so that he would at least have notice. I think he is in the position many of us are in; he is on two or three committees that are all meeting at the same time.

I would like to ask the witness whether Mr. Grafftey had been given notice as to what was going to be said here this morning.

Mr. FARMER: No sir, he was not. I did not know that this was advisable.

The CHAIRMAN: I did not know either, Mr. McCleave.

Mr. McCLEAVE: No. I realize that, Mr. Chairman.

The CHAIRMAN: On the question of privilege, I would think that a full copy of what has been said will be in Mr. Grafftey's hands, and he will have a proper opportunity of replying to it.

Mr. McCLEAVE: In fairness to the witness, he would know about the multiplicity of simultaneous committee meetings. This is a problem that bedevils us.

An hon. MEMBER: Mr. Grafftey is a member of this committee.

The CHAIRMAN: Yes, and he was at several meetings.

Mr. FARMER: Mr. Chairman, I did not realize that he was a member of the committee. I must say, looking back on the previous proceedings, that this is an error on my part.

The CHAIRMAN: I do not think that any harm has been done.

Mr. FARMER: I would certainly like Mr. Grafftey to see this, and I would be very happy to talk to him about it. We did, Mr. Chairman and gentlemen, wish to take this opportunity to correct certain statements that were made, and I appreciate your hearing us out on that.

This, Mr. Chairman, concludes the evidence that we wished to submit on the two bills we were talking about. We have some further evidence that we would like to submit to the committee on Bill No. C-87, if this is the time to do it.

The CHAIRMAN: Yes, this is the time. Have you copies of that statement you made?

Mr. FARMER: Yes. I think this would be advisable, Mr. Chairman, to distribute some of this information.

Just as a preamble, at the hearings on Tuesday when Dr. H. Ward Smith was testifying, some committee members wanted to know if there were some statistics available on the alcohol problem in so far as it related to traffic accidents. I promised that we would endeavour to bring some further evidence before this committee, which I am glad to do today. I regret, Mr. Chairman, that we do not have this evidence in the French language because I did this in rather a hurry yesterday. I apologise to the committee members for not having this available.

The CHAIRMAN: You are just going to make some comments on this?

Mr. FARMER: Yes.

The CHAIRMAN: Perhaps you could undertake to give us a copy in French, and if the committee agrees, then both can be made an exhibit to today's proceedings.

Mr. FARMER: Thank you very much.

The CHAIRMAN: Or they can be made an appendix, if the committee so decides.

Mr. FARMER: I shall be very pleased to do this sir.

Mr. RYAN: Mr. Chairman, I have read this through in English. It seems to be an important document and, therefore, I suggest that the document, in both French and English be made an appendix.

The CHAIRMAN: Is it agreed that the statement on Bill No. C-87, "Alcohol and traffic safety", in both English and French, be made an appendix to today's proceedings, a copy in the French language to be supplied later by Mr. Farmer?

Some hon. MEMBERS: Agreed.

Mr. FARMER: Mr. Chairman and gentlemen, the question was posed: "What is the involvement of alcohol in traffic accidents?". As I think you are aware, the Council does support Bill No. C-87. We feel that the present sections of the Criminal Code of Canada, namely sections 222, 223 and 224, should be repealed, because in our opinion they discriminate in favour of the drinking driver and do not protect the innocent. They constitute an exception to the rules of evidence. They are an obstacle to law enforcement. It is in the interests of public safety that a true disclosure be made of the blood alcohol level of all drivers suspected of intoxicated or impaired driving.

The Grand Rapids Survey, which I believe, gentlemen if any of you have had an opportunity to read it, is one of the classics in alcohol research as far as

traffic accidents are concerned. I have it in my hand here. This is one of the few controlled research surveys done on this problem, and it has gone into it in considerable detail.

To comment briefly on the results of the Grand Rapids Survey which was carried out incidentally by the department of police administration of Indiana University their findings are that in 20 per cent of accidents drivers had a positive blood alcohol level, and that these drivers represented 11 per cent of the driving population. In non-accident statistics these are samples taken from drivers who were not involved in accidents 11 per cent of the drivers had positive blood alcohol levels. I have appended to this some of the statistics which we took from the Grand Rapids Survey.

To go on to just one or two highlights, in every case the higher blood alcohol levels are associated with more frequent accident experience, and in general accident experience increases rapidly as the blood alcohol level approaches and exceeds .05 per cent. This association is so strong that any other explanation of the frequency of accident experience of drivers in the higher blood alcohol range can be substantially ruled out. You will notice that on page 2 of the statistics that we have appended, the accident probability goes from 1 at zero blood alcohol level to 7 times at .10 per cent to 25 times at .15 per cent, and above .15 per cent blood alcohol level it is extremely high. Again on page 2, drivers with blood alcohol level of 0.05 per cent and higher, cause 15 per cent of the accidents, while accounting for just over 3 per cent of the driving population. Drivers with blood alcohol levels of 0.10 per cent representing less than 1 per cent of the driving population, accounted for almost 10 per cent of the accidents. Drivers with .15 per cent blood alcohol level accounted for 6 per cent of the accidents, but were only .15 per cent of the driving population.

Also I think the question was asked, which I have answered, on the involvement of non-accident drivers—11 per cent, and I think this can be seen from table 1. Table 2 is interesting, it shows the involvement index with varying levels of blood alcohol. I think tables 9 and 10, which are listed, also give some idea of the involvement, particularly in the higher blood alcohol levels.

Yesterday, Dr. Ward Smith called me. Since going back to Toronto he had an opportunity to look into his department's reports this year on blood tests they have taken on deceased drivers. His findings were that over 50 per cent of the deceased drivers which were tested by his department had blood levels of .10 per cent or more of blood alcohol. Also I would like to quote in 1954 a survey that was taken in Toronto, which gave the following results.

Non-accident sampling, 7.7 per cent of the drivers had over .05 per cent blood alcohol. In the accident sample, 22.4 per cent of drivers had over .05 per cent blood alcohol.

Holcomb, in his paper "Alcohol in relation to traffic accidents", which was a survey carried out in Evanston, Illinois, reported that in the non-accident group 4.5 per cent of drivers had over .05 per cent blood alcohol. In the accident group, 32.4 per cent of drivers had over .05 per cent blood alcohol. He found that 12 per cent of all drivers had been drinking. This you will notice comes pretty close to the Grand Rapids Survey of 11 per cent.

Dr. William Haddon, Jr., whom we referred to earlier this morning, in his survey in Westchester County, New York, which was a survey of single car fatal

accidents, found that 83 per cent of drivers had .05 per cent or more blood alcohol.

Another survey carried out by Longettie and Barnett in San Bernardino, California, showed that in 68 per cent of San Bernardino fatalities the driver was impaired.

In general, alcoholics or problem drinkers are the main offenders in the traffic accident problem. This viewpoint is supported by authorities in Canada, United States, Great Britain and Australia. There are about 250,000 alcoholics in Canada, and it is estimated that 9 out of 10 drive. The Canadian Highway Safety Council believe that an attempt must be made to segregate the alcohol or problem drinkers from the rest of the driving public. Rehabilitation should be attempted, but if this fails these drivers should be ruled off the road.

Now, supporting this evidence, was an excerpt which came into the office yesterday afternoon, which I would like to read into the proceedings this morning. It is a study entitled "alcoholism and traffic fatalities", a study in futility. It was carried out by Melvin L. Selzer and Sue Weiss, and was published in the American Journal of Psychiatry, Volume 122, No. 7. Pages 762 to 767, January 1966. The study was undertaken to determine the incidents of chronic alcoholism in drivers responsible for fatal non-pedestrian traffic accidents. All deceased and surviving drivers in Washtenaw County, Michigan, who were responsible for fatal traffic accidents between October 1961 and December 1964 were included. Of the group, 40 per cent were alcoholic; 7 per cent were pre-alcoholic; 36 per cent were non-alcoholic. At the time of the fatal accidents 35 per cent had actually been drinking, the majority of drivers falling into the alcoholic group. This group also had a long history of serious psychopathology, being frequently paranoid, depressed, violent or suicidal. Of this alcoholic group, 45 per cent had a history of prior arrest or drunken driving and driving without licences. Two of them also had killed people in previous accidents. The group had more moving traffic violations and arrests than the non-alcoholic group. It is evident from this study that an identifiable group of alcoholics were responsible for more than one-half of the fatal accidents investigated. The authors feel that only a program that is designed to detect, restrain, rehabilitate the alcoholic driver will protect society from the eventualities which are now labelled as accidents. That concludes the quote from this study.

As I say gentlemen, this came to hand after we had prepared this late yesterday. I think it is very significant evidence, which certainly supports Dr. Smith's findings in Toronto, it certainly backs up the other surveys that we have quoted. We intend to get this paper to find out some more about it. I think those are the quoted highlights.

I would also like to bring before this committee the fact that Dr. Ward Smith in his presentation on Tuesday, referred to the fact that CTV were making a special film and program on tests that were being carried out with the co-operation of his department at Harewood Acres, Ontario, by racing car drivers. This program will be entitled ".08" and will be shown on the CTV network on Thursday December 15th, from 9.00 to 9.30 p.m. eastern standard time. I think this would be a film that, certainly, we on the Canadian Highway Safety Council wish to see, and we would think that most people interested in this subject would also wish to see it.

I also would like to leave with the committee as evidence a report of the Ontario Department of Highways on fatal motor vehicle traffic accidents on the King's highways. This is May 1966, and it is a typical one. I took it yesterday and went through it. It lists the fatal accidents on the King's highways in Ontario. This particular report shows that drinking was involved in 50 per cent of the accidents, 51 per cent of the fatalities, and if you take out the pedestrian and the motorcycle, the involvement of drinking goes up to 57 per cent. If it is acceptable, Mr. Chairman, I would like to leave this copy with the committee for the members to see.

I believe Mr. Chairman, that what raised the question on this matter of involvement of alcohol in traffic accidents on Tuesday, was some information that was presented to this committee. I do not have this, but I believe it was information that came from "Accident Facts 1965"—statistics relating to motor vehicle traffic accidents put out by the Ontario department of transport. I hope I am right in quoting these figures because I think these are the ones. In all accidents: ability impaired, 1.7 per cent; had been drinking, 6.1 per cent. In fatal accidents: ability impaired, 2.3 per cent; had been drinking, 13.8 per cent. Assuming, Mr. Chairman, that these were the figures that were presented to you, I have contacted the Ontario Department of Transport, who have advised us, which we felt would be the case, that these statistics they quote are compiled from police reports of accidents, and though on many cases the police may suspect that the driver had been drinking, this does not appear in this report. I think you can understand this—if there is an accident on the highway he may smell of alcohol, but if there are no obvious signs of impairment he will not report this. I have talked to the Royal Canadian Mounted Police about this and they say this is a fact, that this is the way they are forced to operate. I think that this, gentlemen, would explain the discrepancy between these figures which are reported and the figures that I have tabled with you today.

This, gentlemen, concludes any evidence that I wish to submit to the committee at this time on alcohol and highway traffic. I hope that it has been of some use. If there is any further help that we can give to you we would be more than pleased to do so.

The CHAIRMAN: Thank you very much Mr. Farmer. Have you a letter from the Department of Transport?

Mr. FARMER: I have; I do not know whether I should table this.

The CHAIRMAN: Well, I think that having mentioned it and related your comments on it, it should be filed with the committee.

Mr. FARMER: All right. I do not suppose there is anything wrong with it. I asked them a question and this was the reply I got.

The CHAIRMAN: It is agreed by all that it should be appended or included as an appendix to today's proceedings?

We have this report of the Ontario Department of Highways on fatal motor vehicle traffic accidents on the King's highway only. I presume Mr. Farmer has gone through it and has written down at the bottom "drinking, 50 per cent of the accidents and 51 per cent of the fatalities". That, I take it, is taken from this. May I have that letter.

Mr. FARMER: Sir, could I obtain a copy of this for our file?

The CHAIRMAN: We could have one photostatted, yes.

Is it agreed that these will be included as either appendices or exhibits? I think probably they would be better as exhibits, but that is up to you to decide. With the observations that I have made about it, this will be included as an exhibit, and the letter from the Department of Highways will be included as an exhibit also.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Well, now, Mr. Mondoux, do you want to say anything at this stage?

Mr. MONDOUX: Mr. Chairman, I was here to help Mr. Farmer answer questions. Mr. Farmer made a presentation.

The CHAIRMAN: I have Mr. Mather, Mr. Tolmie, Mr. Honey and Mr. Ryan.

Mr. MATHER: Mr. Chairman, I only have one brief question. First of all, I would like to say that I was much impressed by the brief and the presentation made by the Canadian Highway Safety Council. I feel that it covered in a very clear way every aspect of what we have been discussing up until now.

On the basis of your figures, something more than 400 people are being killed every month in Canada on the highways, and rather more than 40,000 people are being injured every month on our highways. This is not even mentioning a three quarters of a billion dollar annual toll which is the direct economic loss associated with these accidents. Naturally, this is a major national problem. Your organization states that it is the national body which seeks to co-ordinate, and in fact does so, efforts toward reducing this toll. With that preamble it seems to me that it sets the picture for my question.

What amount of federal or provincial financial assistance does the Canadian Highway Safety Council receive for its effort?

Mr. FARMER: The Canadian Highway Safety Council, up until this summer, was receiving \$25,000 per annum from the federal government. This was increased this year to \$40,000. We have asked the federal government for a sum of \$50,000, which we feel is a very minimal amount that would be required to start in the many programs we should embark on to tackle this immense safety problem. We are receiving—I have not the exact figure—about \$28,000 from the provinces. In other words, up until this last summer we have been receiving more money from the provinces than from the federal government. Over two-thirds of our support has come from business and industry, and we have been asking them to give on the basis of 50 cents per employee. Some may wonder where this \$250,000 comes from. The government, including the armed services, has about 460,000 people on their payroll. If you took 50 cents per head that would be \$230,000. Each and every day in Canada there are 14,000 hospital beds which are taken up by accident victims. The government is talking about Medicare; I think you can see the tremendous drain which is going on in that direction that we are paying for, to say nothing of the insurance they must have on their vehicles. The Canadian Highway Safety Council is the sole support of the National Safety League of Canada. We are working in many fields, including those which concern the federal government. We are working in fields associated with the Department of National Health and Welfare, and we work with the

Justice Department. We work with the Department of Transport, The Department of Agriculture—we have been asked to undertake the farm safety program by various groups across Canada, as well as with a number of other groups in the federal government, including labour and industry, who, we feel, we are working in conjunction with. We are concerned with safety in all these fields. We feel the council has done a reasonable job with the resources we have had available. We have not done the job that should be done and what could be done. We require additional support not only from the government, but from industry and all associations that are interested in safety. I hope that answers the question, Mr. Chairman.

Mr. MATHER: Thank you.

Mr. TOLMIE: Mr. Farmer, I am not quite sure from your evidence whether you would endorse a national safety code which of course would force all automobile manufacturers to incorporate certain safety features in their cars. Is your committee behind this?

Mr. FARMER: Are we talking of car safety devices sir?

Mr. TOLMIE: Yes.

Mr. FARMER: Yes, we are fully in support of that, as we have so stated in our brief. We have gone on record as favouring and supporting the establishment of minimum safety performance standards for all automobiles manufactured and/or imported for sale in Canada. We further go on to say that we feel that these should be North American in scope. We say that these should be mandatory to get away from the competitive aspects and to make sure that they are put in all automobiles. We have left the constitutionality of this thing to the legal authorities. We are basically concerned in seeing that the mission is accomplished, not how it is accomplished; and anything we can do to support it we will do. I hope that is clear. We are definitely in favour of minimum standards and, as they should be, mandatory standards.

Mr. TOLMIE: The only point you make here is that you have certain reservations about the proposed bill as far as mandates are concerned.

Mr. FARMER: This is right, sir. We have tried to be constructive in our approach to these bills. We certainly compliment the members of this committee and the members of the House who have put forward these ideas because, as I say again, the general intent and idea is that we need car safety features. We are in support of this. We think we see certain things that would not be quite right in the way the bill has been worded.

Mr. TOLMIE: Now, Mr. Farmer, this brief is directed chiefly towards new cars and automobile manufacturers. Of course the majority of cars on the road today are used cars. If this is so, should not a more definite attempt be made to force used car drivers, the ordinary driver, to incorporate certain minimum safety features in his car, if we are really serious about trying to eradicate accidents.

Mr. FARMER: Certainly, we should try to do this. The sooner we can get safety devices into cars, the better. I think we have outlined that the seat belt is a device that can be installed, I would think, in any car.

Mr. TOLMIE: Would your committee recommend legislation which would force all car drivers to have certain minimum standards?

Mr. FARMER: I would think yes, but of course this would have to be within reason. I think you realize what I am talking about. If you limit it to things that the owner of the car could put into it fairly easily or without great modification or cost, then this should be done—I am thinking about seat belts as just one item. We would say yes, this should be done.

Mr. TOLMIE: The reason I bring this up is that most of the witnesses devote a great proportion of their time and thought to new cars, and to my way of thinking there is a certain skirting of the fact that the essential point is to have safety devices put in the cars now being used.

You also state that 85 to 90 per cent of traffic accidents result from driver error, and I assume this to be correct. If this is so, then should not most of your attention be devoted to improving driving habits? I was just wondering if you would recommend say, stricter tests before drivers receive their licences. And after they do receive their licences should there not be periodic examination? If this is the crux of the matter—85 or 90 per cent—then why is there not more effort devoted to this sphere?

Mr. FARMER: We have, as stated in our brief, always advocated what we call a balanced program. We agree that minimum car safety standards are essential. We also have been expending a great deal of our efforts in the field of driver education. We believe that educating the public in proper driving habits, to avoid the accident in the first place, is one of the very important factors. In other words, if we spent all our time on car safety devices and disregarded the rest of it, it would be similar to giving a tuberculosis patient cough medicine; it might cure his cough but it would not cure the disease. I think if you look at our presentation which we have left with you, you will agree that the Canadian Highway Safety Council has expended quite an effort in the field of driver education. We not only do this, but we believe in a program that starts with the pre-school child.

We have a national program called "Elmer, the Safety Elephant" program, which is slanted to the youngsters from kindergarten to grade 4. In communities where this program has been carried out the accident rate involving school children has gone down up to 50 per cent in nearly every case. We also sponsor and advocate bicycle safety programs to educate the young people to learn to operate a vehicle properly in traffic and, incidentally, also to reduce accidents. We advocate high school driver education. Where high school driver education has been put into the schools, accidents have been reduced 50 per cent, and violations reduced by 81 per cent.

One of the great concerns we have is that most young people today obtain their driver's licence without proper driver education. This year, in 1966, we estimate that nearly 385,000 young Canadian boys and girls will come of driving age, yet a survey that we did this year shows that less than 4 per cent of these young people actually will have the opportunity to take a driver education course. We go further than this; we believe that there should be re-education programs. We have a program called our Driver Improvement Program, which is aimed at the person holding a driver's licence, to upgrade their driving. We have pretty good evidence to suggest that well over a million Canadians obtain their driver's licence without any form of test whatsoever. This is an alarming thing, when many of us learned to drive, there were no expressways. Speed limits were 40 miles an hour. Techniques have changed and people should be upgrading

their knowledge. This whole problem of education is a continuing one. We must have a continuing education program for the pedestrian. Twenty-seven per cent of our fatalities last year were pedestrians. This is a big program. Going beyond that, we are on record as advocating periodic driver re-examination. We feel this should be done. That program that was put on last year, "The Canadian Driver's Test", which we were privileged to have a hand in, indicated that possibly 42 per cent of Canadian drivers might fail to pass the test if they were given one.

Mr. TOLMIE: Mr. Farmer, if this is so important—and from your evidence it is—would it not be good policy on the part of your committee to bring your influence to bear in provincial governments to make it mandatory to pass driver education courses and get a certificate before licenses are granted. This would put teeth into your program.

Mr. FARMER: We have been at this a number of years now. We have a program qualifying high school driver education teachers. This summer we qualified 407 high school teachers to teach driver education in Canadian high schools. This is a start, it requires a lot of money, we spent something like \$52,000 of our budget on this alone. We have trained 11,000 so far in Canada, and this is a continuing program. We have advocated this, and we feel that we are on the verge of a major breakthrough with the provinces. The Province of Quebec this year has made high school driver education mandatory in all vocational schools. We are hoping that next fall it will be compulsory in all secondary schools in the province. The Province of Alberta is looking very seriously at this. The Province of Saskatchewan now are giving the course to about 25 per cent of the secondary school pupils, and they expect to make it mandatory next fall. We have been talking to most of the provinces and there is evidence coming in now that we are on the verge of a breakthrough in this field. In Ontario there will be 200 schools this fall giving driver education. This is a big program and it requires a lot of money. It has been a hard one to sell, particularly to departments of education and school boards which feel that their programs are already very full.

The CHAIRMAN: Thank you. Mr. Honey is next, followed by Mr. Ryan and Mr. Guay.

Mr. HONEY: Mr. Farmer, has the council facilities for doing research work in automobile safety features.

Mr. FARMER: No sir, we have not.

Mr. HONEY: Do you have to rely then on recommendations from institutions or organizations who have these facilities, such as the automobile manufacturers?

Mr. FARMER: This is right, sir, we rely on studies that have been done by the automobile manufacturers, by a number of universities, and there are a number of private institutions which are doing research work in this field.

Mr. HONEY: What are some of the private institutions, Mr. Farmer?

Mr. FARMER: I was thinking more of universities when I said that.

Mr. HONEY: So it is pretty well limited to universities and the automobile manufacturers.

Mr. FARMER: This is right.

Mr. HONEY: Do you find much divergence, if any, in the findings and recommendations of the manufacturers as opposed to the university groups?

Mr. FARMER: I do not know that I can answer that question fairly. Certainly in the papers that I have been privileged to read, and the meetings that I have attended—two weeks ago I went down to the Staff Car Crash Conference—it appears that they are working toward the same end. I have not seen any radical differences of opinion.

Mr. HONEY: Is there a fallacy that there is a danger in wearing seat belts? Some people say that it is debatable whether or not seat belts are helpful, you know how such things get around. Have you a comment on this?

Mr. FARMER: This unfortunately has been a deterrent to the use of seat belts. This is a problem that we try to overcome by public information releases, articles and newspapers. You meet people quite often who are violently opposed to using them because they have some idea that they may be trapped in the car and so on.

Mr. HONEY: That is a concern of yours, is it?

Mr. FARMER: That people have been given the wrong information or assume the wrong information?

Mr. HONEY: Yes.

Mr. FARMER: The facts show that, as you have seen here today—

Mr. HONEY: Oh, we have seen the facts, yes, I wondered if this opinion or fallacy was a real thing that does concern you.

Mr. FARMER: Just how prevalent it is, it is difficult to say. Certainly I would say that the majority of the public have assured themselves that driving around town they are quite safe without doing up the seat belt, whereas we know that this is not true.

Mr. HONEY: I suspect this excuse is used by people who probably do not like to be bothered using the seat belt.

Mr. FARMER: This is right. I was talking to a garage owner one day and he said that I would be amazed at the number of people who come in and ask him to remove the seat belts, their excuse apparently being that they are too uncomfortable to sit on. This is the type of thing you are up against.

Mr. HONEY: Thank you, Mr. Chairman. I hate to ask questions and then leave, but I have an appointment. I thank Mr. Tolmie for letting me proceed.

Mr. RYAN: Mr. Chairman, I would like to ask Mr. Farmer if the Canadian Highway Safety Council is incorporated; if so, how?

Mr. FARMER: We are incorporated under federal charter as a non-profit organization.

Mr. RYAN: Have you any competitors with a federal or provincial charter in his field in Canada?

Mr. FARMER: No sir—well, there are other provincial safety councils which are supporters of ours.

Mr. RYAN: And they work harmoniously with you in all cases.

Mr. FARMER: Yes sir. They are members of our executive.

Mr. RYAN: Do you gather accident statistics for your own use or do you depend upon the Dominion Bureau of Statistics for them?

Mr. FARMER: We use the Dominion Bureau of Statistics; we also gather statistics for our own use. We have a system set up with all the major cities in Canada over 5,000 population. We get reports from them twice a year on their accident picture. We publish the facts on this.

Mr. RYAN: This committee has had evidence from a prior witness to the effect that accident statistics in Canada is very difficult to obtain with any great degree of accuracy because there are so many jurisdictions and the various police departments have different standards for making up their reports. Do you find this to be the case?

Mr. FARMER: I think that we are getting reports that are probably reasonably accurate with regard to what is being asked. Now there are certain problems to this; these are police reports and they are not gone into in any great depth. I think we have to recognize this. There are two things required, one of which is to collect general data on all accidents, which should be as simple as possible. But to go beyond this, to go into it in depth, to get research statistics on which to base your accident prevention programs, your car safety designs, and so on, would require research in depth on a segment of the accident problem.

Mr. RYAN: Do you consider the fact that you cannot have absolute confidence in your statistics a great weakness in your field?

Mr. FARMER: Let us put it this way; I think that we could be aided greatly by better and more statistics. However, I do feel that we have a great deal of evidence today to support certainly the major programs we are embarked upon. In other words, we still feel quite sure, for example, that education of the young people in the schools, driver education—

Mr. RYAN: If I can interrupt you, that is in a different area than what I am talking about.

Mr. FARMER: Are you thinking of car safety sir?

Mr. RYAN: I am thinking of the statistics and reporting that you are getting; is it good or is it bad? Does it give you a substantial picture or does it just give you part of the picture?

Mr. FARMER: To answer the question specifically, it only gives part of the picture, yes.

Mr. RYAN: Is there anything your council could do to improve this picture? Have you any thoughts along that line?

Mr. FARMER: We have been talking to the motor vehicle administrators, who are really the ones in each province who gather these statistics, and they in turn report them to D.B.S. The last provincial federal conference which we had the privilege of participating in was in 1955 or 1956 I believe—I am not sure of those dates. We are hoping that one will be reconvened within the next few months to go into this picture. I think we must realize that this is fairly complicated and we must have some really definite ideas of what we want in the way of facts; what do we need to carry out our research programs, whether they are educational or designed programs.

Mr. RYAN: Well have you a standard report that you are prepared to recommend to all jurisdictions and police commissions across the country?

Mr. FARMER: There is a standard report that I think is being used, which is one that was agreed on by the provinces and the D.B.S. There is also a standard form of reporting.

Mr. RYAN: I take it the breakdown today is coming from the individual accident report not being complete in some cases or no report at all being turned in in other cases when there should have been. There would be a weakness in this.

Mr. FARMER: Well I do not say that is the prime weakness. I think that it depends again what date you are trying to get out of the report. I do not think that you can design one form which will give you all the information that you would require to do research work. It would be too complicated. The police officer himself, for example, would not be capable of going into an accident in detail to determine the cause of the accident, and so on. This would require a team of skilled people: engineers, medical people, and other research people, and I think that on this basis you cannot do that across the board. I think it was Dr. Mosley, in his study in the United States, who said that something between one and two hundred fatal motor vehicle accidents that he investigated in depth with a team of research people engineers, doctors, so on, cost him something in the neighbourhood of half a million dollars. So you can see this is a very, very costly investigation, and I do not think it would be necessary to do anything like this across the board to get us the information that would be required to develop programs, whether they are educational or engineering programs.

Mr. RYAN: What other plans have you for spending the extra money you are asking for now in your budget.

Mr. FARMER: There are many areas, sir, that we should be getting into in the educational field. We should be doing this driver improvement program which we have been given Canadian rights to, which will take, we estimate, at least 100,000 to fund and make it self supporting. We would like to get into the field of carrying out a traffic safety inventory of all the major cities in Canada, and this will take considerable money—in other words, to go in each year and study their accident problems. In the statistics field there are many things we would like to do, get out proper statistics, public information pieces on safety and so on. We would like to spend more money in the education field; we would like to do more in the co-ordinating field between the provinces and between research groups; also in the publishing of information that comes up. We are very limited in what we can do with our present resources. There is no end to what we can be doing. To be quite frank, we are scratching the surface on this problem.

Mr. RYAN: Thank you.

The CHAIRMAN: Mr. Guay.

Translation)

Mr. GUAY: This question might be out of order, but regarding the matter of second-hand vehicles which was brought out by Mr. Tolmie just now, have you got a procedure which must be used to guarantee that these vehicles should be provided with minimum safety devices. Have you thought of such a form?

Mr. MONDOUX: With your permission, Mr. Chairman, I will answer Mr. Guay. Mr. Guay, in this respect we have not prepared a procedure of that kind that we could put before the Government to ensure inclusion of safety devices in automobiles, but there is already a form which is more or less accepted and I think it is just a question of time before it is generally accepted, and that is compulsory inspection of automobiles. You have voluntary inspection in Quebec at the present time, you have a sort of compulsory inspection in Ontario. It becomes obligatory if a policeman tells a driver that he has to submit to it. In British Columbia you have inspection, you also have it in its voluntary form in Alberta and Saskatchewan. And in the Maritime Provinces, they are talking about it. It is just a matter of time before we get compulsory mechanical inspection. This is the way to ensure the inclusion of safety devices which will be considered essential to the safety of the driver in Canada.

As for passing legislation *a priori*, so to speak, if the present bill is to contain a provision obliging drivers of old vehicles to put certain safety devices in them, the only means of enforcement would be through a system of compulsory inspection, by the provinces of course.

Mr. GUAY: You say 12 years, is that not a long time? I am referring to page 10 of your report, where you say it would take about 12 years.

Mr. MONDOUX: Yes, because so far we have been of necessity obliged to look at things as they are and we must take account of the fact that the driver doesn't do things voluntarily. When you have voluntary inspection, and you have a driver who is afraid his car may have something wrong with it, then he will not go anywhere near an inspector. At the present time you have no means of forcing a driver to put this or that device in his car, but, even so, there is an infringement of personal freedom, unless the device is essential for saving lives. You have to decide this before you take this aspect of the law into consideration. In some of the States of the United States they do force you to install seat belts but not to fasten them on. There is one particular city, I cannot remember its name, where somebody proposed a municipal ordinance to force every driver in his car to fasten his safety belt, and they tried it out to see how the public would react. You can be quite certain that if that were done federally there would be a civil war.

Mr. GUAY: Do you not think that there is something that could be done through the automobile insurance companies; they could declare a person non insurable, if he did not put in safety devices. As you know in the Province of Quebec if you have an automobile accident with damages over \$250, the driver has to take out new insurance and submit to a driving examination. So in the Province of Quebec, there is a certain control over accidents, but it seems to me that the automobile insurance companies would be very useful here?

Mr. MONDOUX: I think the Committee would be entirely in agreement with you. Some companies are seriously thinking of offering reduced premiums for cars which do have safety belts. This sort of thing is quite possible because insurance companies are really bothered about reducing the number of serious accidents and, of course, the high claims which follow.

(English)

Mr. FARMER: Mr. Chairman, if I might comment, the city in the United States that put in this ordinance requiring seat belts to be fastened or the owner would be subject to a fine, was the city of Brooklyn.

There is also another very interesting item on seat belt liability, which we have noticed here and which is along the line you suggest sir. A Texas jury has found the plaintiff's failure to wear a safety harness with which the car was equipped, was contributory to negligence and therefore reduced the plaintiff's recovery damages by 95 per cent. So it looks as though the insurance companies are looking very seriously at this now, and things like this will certainly have an impact on the driving public. When they learn that they may have 95 per cent of their claim washed out for failure to wear a seat belt, this would, I think, be an incentive for them to do something about it.

Mr. McCLEAVE: I was wondering how the council operates. We have heard statements from Mr. Farmer and his associate this morning. Are these statements or pronouncements on behalf of the council the result of the council having passed resolutions, for example?

Mr. FARMER: On car safety?

Mr. McCLEAVE: Yes, on any topic that you have discussed with us here this morning.

Mr. FARMER: Yes sir.

Mr. McCLEAVE: How does the authority work? Do you get the right to speak from what council has decided?

Mr. FARMER: Yes. I think I stated that council policy is carried out by our executive committee. We have a national safety conference every year, which people from all across Canada attend. Resolutions are put before the conference, and we pass certain things. Nearly every year in the last ten years, for example, we have had resolutions on your bills, as well as on sections 222, 223 and 224 of your Criminal Code, which we want repealed. We do consider definite items such as safety devices and so on, and pass resolutions on them.

Mr. McCLEAVE: I was not sure, in answer to the last witness, whether you said the council had considered resolutions dealing with safety devices for older cars, but had not adopted the same.

Mr. FARMER: To my knowledge, we have not considered resolutions on older cars per se, no.

The CHAIRMAN: Is that all Mr. McCleave?

Mr. McCLEAVE: Yes, thank you very much.

The CHAIRMAN: Mr. Latulippe, you are next.

(Translation)

Mr. LATULIPPE: I do not have very many questions to ask. I do recognize that it is late.

(English)

The CHAIRMAN: I know it is late, but we want to hear you.

(Translation)

Mr. LATULIPPE: I will reserve my questions for some future occasion, but I would like to thank the Canadian Highway Safety Council for its brief. There are certainly very many improvements which are necessary for highway safety. What you do is certainly worthwhile and is of great help to society at large. But

the small question I would like to ask you refers to insurance. We will agree that at the present time there are many accidents which are very expensive. The insurance policies are very expensive. If somebody has an accident and sees his premium raised, would it not be better to ask the provinces—since it is under provincial jurisdiction—to have some kind of standardized automobile insurance because I believe that the insurance companies exercise a control which is all their own and which is really in their favour rather than in favour of the insured. I feel the insurance companies really go a little too far. I wonder whether there should not be another solution. I believe that the various levels of government should have some kind of an insurance at reasonable levels to compete with private insurance companies.

(English)

Mr. FARMER: Mr. Chairman, if I might answer, I would say that this is definitely outside the sphere of the Canadian Highway Safety Council; it is not really safety *per se*.

In answer to your question sir, I do not think that we would be in a position really to speak to it. Because I would not consider this a safety problem in that regard I would prefer not to make any statement. We do not think this is at all within our sphere of action.

The CHAIRMAN: Well, it is certainly a matter of provincial government policy, maybe even federal government policy. I think the province of Saskatchewan has insurance legislation. I know it insures the drivers of automobiles, but whether that increases the safety on the highways or not is a debatable point. It does provide for compensation to people who are injured or suffer property loss.

Have you any more questions Mr. Latulippe?

Mr. LATULIPPE: No, Mr. Chairman.

The CHAIRMAN: Mr. Farmer and Mr. Mondoux, I can assure you that we all have listened with a great deal of interest to what you have had to say. We thank you for coming and particularly for your courtesy in remaining so that all questions could be asked.

APPENDIX 11

CANADIAN HIGHWAY SAFETY COUNCIL
LE CONSEIL CANADIEN DE LA SÉCURITÉ ROUTIÈRE

Bill C-87—Alcohol and Traffic Safety

The Canadian Highway Safety Council supports Bill C-87. Present sections 222, 223 and 224 of the Criminal Code should be repealed because they:

1. discriminate in favour of the drinking driver and do not protect the innocent;
2. constitute an exception to the rules of evidence;
3. are an obstacle to law enforcement; and
4. It is in the interest of public safety that true disclosure be made of the blood alcohol level of all drivers suspected of intoxicated or impaired driving.

Grand Rapids Survey (Refer to statistics)

20 per cent accidents—drivers had positive blood alcohol levels; 11 per cent of driving population.

Non-accident—11 per cent of drivers had positive blood alcohol levels.

1966 Report Ontario Attorney General's Laboratory—

Over 50 per cent of deceased drivers had .10 per cent or more blood alcohol.

1954 Toronto Survey—

Non-accident—7.7 per cent of drivers had over .05 per cent blood alcohol.

Accident—22.4 per cent of drivers had over .05 per cent blood alcohol.

Holcomb—Paper—Alcohol in Relation to Traffic Accidents (Evanston, Illinois)

Non-accident—4.5 per cent of drivers had over .05 per cent blood alcohol.

Accident—32.4 per cent of drivers had over .05 per cent blood alcohol. 12 per cent of all drivers had been drinking.

Dr. Wm. Haddon

Westchester County, N.Y.—Survey of single car fatal accidents. 83 per cent of drivers had .05 per cent or more blood alcohol

Longhetti & Barnett Survey—San Bernardino, California.

68 per cent of San Bernardino fatalities, driver was impaired.

Alcoholics or problem drinker are the main offenders. This viewpoint is supported by authorities in Canada, United States, Great Britain and Australia.

There are about 250,000 alcoholics in Canada and it is estimated that 9 out of 10 drive.

An attempt must be made to segregate the alcoholic or problem drinker from the rest of the driving public.

Rehabilitation should be attempted, but if it fails, these drivers should be ruled off the road.

Use of the Breathalyzer—

1. Substantiate evidence in cases of suspected impaired or intoxicated driving.
2. Occasional blockade.

STATISTICS FROM GRAND RAPIDS SURVEY

Driving with blood alcohol levels up to 0.08 per cent are less frequently observed in the accident-involved group than in the non-accident group.

Drivers with alcohol levels over 0.08 per cent are over-represented in the accident group with the amount of over-representation increasing with the alcohol level.

In the accident group alone the drivers with blood alcohol levels up to 0.04 per cent are under-represented while drivers with blood alcohol levels greater than 0.04 per cent are over-represented. Moreover, the amount of over-representation tends to increase as the blood alcohol level increases. Drivers with blood alcohol levels of 0.15 per cent and higher have the worse accident experience and there are 18 times as many drivers found in the accident group than would be expected on the basis of the non-accident sample.

Drivers in the blood alcohol range 0.05 per cent to 0.15 per cent appear twice as frequently in the accident as in the non-accident group indicating that drivers in this blood alcohol range are contributing more than their proportional share to accidents.

In every case, the higher blood alcohol levels are associated with more frequent accident experience and, in general, accident experience increases rapidly as the blood alcohol level approaches and exceeds 0.05 per cent. This association is so strong that any other explanation of the frequency of accident experience of drivers in the higher blood alcohol range can be substantially ruled out.

Based on the results of the Grand Rapids Survey, the probability of having an accident after drinking goes something like this:

<i>Blood Alcohol</i>	<i>Accident</i>
<i>Level</i>	<i>Probability</i>
0.00%	1.0
0.03%	0.6
0.04%	1.0
0.06%	2.0
0.10%	7.0
0.15%	25.0
above 0.15%	very high

Drivers with positive alcohol levels caused more than 20 per cent of all accidents while constituting about 11 per cent of the driving population.

Drivers with a blood alcohol level of 0.05 per cent and higher caused 15 per cent of the accidents while accounting for just over 3 per cent of the driving population.

Drivers with blood alcohol levels of 0.10 per cent representing less than 1 per cent of the population accounted for almost 10 per cent of the accidents.

Drivers with over 0.15 per cent blood alcohol level accounted for 6 per cent of the accidents and were only 0.15 per cent of the driving population.

Table 1
DISTRIBUTION OF ALCOHOL LEVELS

Group: Alcohol Level	Non-Accident		Accident		Non-Accident			Accident	
	No.	Per Cent	No.	Per Cent	Alcohol Level	No.	Per Cent	No.	Per Cent
0.00	6756	89.01	4992	83.41	0.19	1	0.01	14	0.23
0.01	276	3.64	188	3.14	0.20	2	0.03	14	0.23
0.02	134	1.77	95	1.59	0.21	0	0.00	12	0.20
0.03	96	1.26	57	0.95	0.22	0	0.00	6	0.10
0.04	83	1.09	66	1.10	0.23	1	0.01	9	0.15
0.05	56	0.74	50	0.84	0.24	0	0.00	6	0.10
0.06	44	0.58	46	0.77	0.25	1	0.01	3	0.05
0.07	32	0.42	36	0.60	0.26	0	0.00	3	0.05
0.08	28	0.37	39	0.65	0.27	0	0.00	3	0.05
0.09	27	0.36	39	0.65	0.28	0	0.00	2	0.03
0.10	14	0.18	54	0.90	0.29	0	0.00	0	0.00
0.11	7	0.09	38	0.63	0.30	0	0.00	1	0.02
0.12	16	0.21	43	0.72	0.31	0	0.00	1	0.02
0.13	4	0.05	30	0.50	0.32	0	0.00	0	0.00
0.14	3	0.04	21	0.35	0.33	0	0.00	0	0.00
0.15	4	0.05	33	0.55	0.34	0	0.00	1	0.02
0.16	2	0.03	27	0.45	0.35	0	0.00	1	0.02
0.17	1	0.01	30	0.50	0.36	0	0.00	2	0.03
0.18	2	0.03	21	0.35	0.37	0	0.00	2	0.03
Totals: 7590 100.00 5985 100.00									

Table 2
DISTRIBUTION OF OBSERVATIONS BY ALCOHOL LEVEL CLASSES

Blood Alcohol Level	Non-Accident Group		Accident Group		Total		Accident Involvement Index*
	Per Cent	No.	Per Cent	No.	Per Cent	No.	
0.00.....		6756	89.01	4992	83.41	11748	86.54
0.01.....		276	3.64	188	3.14	464	3.42
0.02.....		134	1.77	95	1.59	229	1.69
0.03.....		96	1.26	57	0.95	153	1.13
0.04.....		83	1.09	66	1.10	149	1.10
0.05.....		56	0.74	50	0.84	106	0.78
0.06.....		44	0.58	46	0.77	90	0.66
0.07.....		32	0.42	36	0.60	68	0.50
0.08.....		55	0.72	78	1.30	133	0.98
0.10.....		21	0.28	92	1.54	113	0.83
0.12.....		23	0.30	94	1.57	117	0.86
0.15.....		14	0.18	191	3.19	205	1.51
Totals.....		7590	100.00	5985	100.00	13575	100.00

*A positive Accident Involvement Index indicates a class is over-represented, and a negative index at a class is under-represented, in the accident sample, with the non-accident group as a standard.
—Taken from Grand Rapids Survey—

Table 9
RANKING OF VARIABLES OF CLASSIFICATION

Variable of Classification	Ratio of Observed to Expected Number in Worst Class— Accident Group			Ratio of Observed to Expected Number in Best Class— Non-Accident Group		
	Rank	Ratio	Worst Class	Rank	Ratio	Best Class
Blood Alcohol Level	1	17.72	0.15% and higher	5	0.75	0.03–0.05%
Age	2	2.57	17 years old	4	0.72	45–54 years
Estimated Annual Miles driven	3	1.73	1000 mi. or less	6	0.85	15,001–over
Years of Education	4	1.40	Less than grade 8	2	0.60	More than 16 yrs.
Race or Nationality	5	1.39	Non-white	8	0.97	White
Marital Status	6	1.37	Single	7	0.88	Married
Occupational Status	7	1.30	Lower	3	0.64	Upper
Reported Drinking Frequency	8	1.17	1 or more/mo.	1	0.58	Daily
Sex	9	1.08	Female	9	0.98	Male

Table 10
DISTRIBUTION OF ALCOHOL LEVELS 0.15% AND HIGHER BY AGE CLASSES

Age Class (years)	Number Observed			
	0.00% alcohol level		0.15%+ alcohol level	
	Non-Accident Group	Accident Group	Non-Accident Group	Accident Group
15.....	14	12	0	0
16-17.....	181	352	0	0
18-24.....	1276	1426	0	23
25-34.....	1369	941	5	52
35-54.....	2519	1483	9	87
55-64.....	665	459	0	22
65-69.....	180	129	0	7
70-74.....	67	107	0	1
75 +.....	46	80	0	0
Total.....	6317	4989	14	192

—Taken from Grand Rapids Survey—

HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 19

TUESDAY, NOVEMBER 29, 1966

Respecting the subject-matter of
Bill C-105, An Act to Amend the Criminal Code (Insanity)

WITNESSES:

Mr. Andrew Brewin, M.P., Sponsor of Bill C-105; Professor Stanley Beck,
B.A., LL.B., LL.M.; and Professor Stuart Ryan, Q.C., B.A., LL.B.

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STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest
and

Mr. Addison,	Mr. Honey,	Mr. Nielsen,
Mr. Aiken,	Mr. Laflamme,	Mr. Otto,
Mr. Choquette,	Mr. Latulippe,	Mr. Ryan,
Mr. Fulton,	Mr. MacEwan,	Mr. Scott (<i>Danforth</i>),
Mr. Goyer,	Mr. Mather,	Mr. Tolmie,
Mr. Grafftey,	¹ Mr. McCleave,	² Mr. Trudeau,
Mr. Guay,	Mr. McQuaid,	Mr. Wahn,
		Mr. Woolliams—24.

(Quorum 10)

¹ Replaced by Mr. Pugh, November 24, 1966.

² Replaced by Mr. Whelan, November 28, 1966.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

THURSDAY, November 24, 1966.

Ordered—That the name of Mr. Pugh be substituted for that of Mr. McCleave on the Standing Committee on Justice and Legal Affairs.

MONDAY, November 28, 1966.

Ordered—That the name of Mr. Whelan be substituted for that of Mr. Trudeau on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

TUESDAY, November 29, 1966.
(23)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Addison, Aiken, Cameron (*High Park*), Forest, Grafftey, Goyer, Guay, Honey, MacEwan, Mather, Ryan, Tolmie (12).

In attendance: Mr. Andrew Brewin, M.P., Sponsor of Bill C-105; Professor Stuart Ryan, Q.C., B.A., LL.B.; and Professor Stanley Beck, B.A., LL.B., LL.M.

The Chairman introduced Mr. Brewin who made a statement on his Bill C-105. Professor Ryan and Professor Beck in turn made statements covering their written presentations.

The witnesses distributed various material to the Committee.

Agreed,—That the extract from Mental Disability and the Criminal Law pp. 30-372, the extract from Canadian Psychiatric Association Journal, June, 1964, Vol. 9, pp. 227-231 and copy of the case United States v. Freeman, United States Court of Appeals—Second Circuit, Federal Reporter 2nd Series, Vol. 357, p. 606-629, be made exhibits (Exhibits 17, 18 and 19 respectively).

Agreed,—That Criminal Insanity (From M'Naghten to Durham) prepared by the Research Branch, Library of Parliament, November 17, 1966 Mental Abnormality and the Criminal Law, by Professor Stuart Ryan, and Alternatives to the M'Naghten Rules by Professor Stanley Beck, be appended to today's Minutes of Proceedings and Evidence (See Appendices 12, 13 and 14 respectively).

After questioning, the Chairman thanked the witnesses for their kind cooperation and contributions to the Committee's proceedings.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, November 29, 1966.

The CHAIRMAN: Gentlemen, we have a quorum. I would like to remind the members of the Committee of our trip to Windsor. We leave from the centre block at 7.30 by bus to go to the airport. You have all received a copy of the itinerary. I understand present prospects are that there will be between 16 and 18 members of the committee on the tour. I think it is going to be very, very interesting. I will say no more on that, except to remind you to please be prompt at 7.30 so that there will be no delay in our departure.

Now, I have the honour to introduce our witnesses today. First of all, we have with us my friend and partner, Mr. F. Andrew Brewin, Q.C. We were partners for a good many years in the practice of law. I do not know whether or not we are partners in the practice of politics. Mr. Brewin is a distinguished counsel. He is particularly interested in underprivileged people. He is particularly interested in seeing that people receive a fair trial which brings him to the proposition of considering the M'Naghten rules which have been a standard of judicial evidence for a long, long time. You have all heard Mr. Brewin in the house and know of the active part he takes in all the debates of that chamber.

We also have with us today Professor H. S. Ryan of Queen's University. He obtained his B.A. from the University of Toronto in 1930, was called to the bar in 1933. He practised law from 1934 to 1957, interrupted between 1940 and 1946, during which time he was in the Canadian Army. In 1948, he became a Queen's Counsel. He has been a professor at Queen's University in the faculty of law since 1957, teaching criminal law and criminology, as well as other subjects.

We also have the pleasure to have with us today as a witness, Professor Stanley Beck, also of Queen's University. He earned his B.A. and LL.B. at the University of British Columbia and his LL.M. at Yale University. He is a member of the bars of British Columbia and Ontario. He is on the faculties of the universities of British Columbia and Queen's, teaching criminal law and other subjects. He is the editor of the University of British Columbia case book on criminal law and is on the editorial board of the CRIMINAL LAW QUARTERLY. We have great pleasure in welcoming these distinguished gentlemen to our meeting this morning. Without further ado, I will call upon Mr. Brewin to say what he has to say about the subject matter.

Mr. BREWIN: Mr. Chairman, it is not often I receive these accolades and praise from a former partner and one who, in at least a remote sense, is still a political partner. I would like to get on with the subject as quickly and directly as I can. I introduced a bill, Bill No. C-105, which was referred to this Committee. It deals with the subject of responsibility for criminal acts of persons

who are—and I put the word in quotation marks—“insane”. I use quotations because although that is the language of lawyers, it is an expression which I understand the experts in mental science, psychiatry, and so on, do not like. The bill is quite simple. It purports or seeks to amend section 16 of the Criminal Code which at present incorporates with some differences, a famous rule of law that has been applied in all common law countries such as England, Canada and the United States with variations, which I will mention.

The M’Naghten rules as to criminal responsibility were established in 1843 by an opinion of the judges of England asked for by the House of Lords in the famous M’Naghten case. M’Naghten, as some of you know, was the chap that suffered under delusions that he was being persecuted by the Tories. As a result of this he attempted to shoot Sir Robert Peel. He did not succeed in shooting him, but he did succeed in shooting his secretary. Henry Drummond, I believe, was the name of the man. He was not guilty on the ground of insanity, but there was a public outcry, public indignation, about the finding of not guilty and the House of Lords asked for the opinion of the judges, which was given in a series of rules on insanity as a defence to criminal responsibility. Ever since, these rules have been applied in the courts under growing criticism from various people, lawyers, psychiatrists, medical experts, and so on. The Canadian code, I think in 1893, with a few variations—my colleagues will correct the details, since they are much more expert than I in this field. Section 16 says:

(1) No person shall be convicted of an offence in respect of an act or omission on his part while he was insane.

(2) For the purposes of this section a person is insane when he is in a state of natural imbecility or has disease of the mind to an extent that renders him incapable of appreciating the nature and quality of an act or omission or of knowing that an act or omission is wrong.

(3) A person who has specific delusions, but is in other respects sane, shall not be acquitted on the ground of insanity unless the delusions caused him to believe in the existence of a state of things that, if it existed, would have justified or excused his act or omission.

(4) Every one shall, until the contrary is proved, be presumed to be sane and to have been sane.

In other words, the onus is on an accused person to show that he is insane, under this definition. This definition is virtually the same as the M’Naghten rules; one notable exception is that the word “appreciate” is used instead of the word “know”. Some people—which I will mention in more detail later—have seen some great significance in the difference. As far as I am concerned I do not think there is any clear difference between knowing and appreciating. This has been called the right or wrong test; that you are not responsible if you cannot appreciate or know whether the criminal act was right or wrong.

Now, the amendment which I propose is based upon a decision of the United States court of appeals in 1954 in the case of *Durham versus the United States*. Incidentally, that was a reaffirmation of what is known as the New Hampshire rule. For over a century, the courts of New Hampshire have been applying a different rule. It is a very short and simple provision which says:

no person shall be convicted of an offence in respect of an act or omission on his part while he was insane.

That does not change the section.

(2) For the purposes of this section a person is insane . . .

If the act of omission is the product of mental disease or defect.

Subsection (3) remains the same, presumption a person must show; that is the product of mental disease or defect. So, if this rule were adopted as I understand it, in a criminal case the defence would have the obligation, first of all, to show that the accused suffered from mental disease or defect, and, secondly, that there was a causal connection between this mental disease or defect and the commission of the criminal act.

Now, may I say that ever since we have had any sort of civilized criminal law, it has been recognized that, as the criminal law is designed to punish and deter people, it would be wrong to punish and impossible to deter people whose actions are not the result of any volition or will of their own but are the result of some mental disease. The real difference is between whether people should be treated as ill people or whether they should be punished or deterred as criminals.

It has long been recognized, ever since there has been any law, in England, in the 1300's, at any rate, that people were not responsible for their actions if they were totally unable to form any intent and were so mentally unbalanced

No subject in the whole field of criminal law has been more controversial and difference of opinion owing to the growth of psychiatric knowledge and the study of the human mind on what is a proper test to determine this.

No subject in the whole field of criminal law has been more controversial and had more learned articles written about it and more differences of opinion. Of course, it is a matter of very great importance for two reasons. One, that people who are not responsible should not be punished by the law; humanity requires that. The other side of the picture is that those who are mentally ill should be treated and should be detained as long as necessary so that the substitution of a different and more up to date definition would have a dual effect, namely to prevent the criminal punishment of those who fall within the revised definition and may not be held responsible. It would also have the opposite effect, that when these people were found to be in this condition and sent for treatment, they might be detained, not for some period fixed as an appropriate punishment, but for a period that their mental health and the safety of society requires. The changes are really a double-edged sword.

Now, I think I could summarize the matter reasonably accurately by saying that there are three, or perhaps four, different ways in which this matter has been dealt with. One is the M'Naghten test, which I have given to you already and, subject to modification in the Criminal Code, is the law of Canada and the law of many other jurisdictions.

The second test might be the addition of something called irresistible impulse, which has been adopted in many cases in the United States, recognizing that mental defects or illness may have still left the knowledge of the person unimpaired but made it impossible for him to control his actions.

Third, is the Durham case, or the New Hampshire rule, which is embodied in the amendment I have proposed.

The fourth is a test originally propounded by the American Law Institute and recently adopted by, I think it is, the Circuit Court of Appeals again, the United States Court of Appeals Second Circuit in the case of the United States

versus Freeman. That was adopted in a New York case, decided in 1966. It proposes still another test, which I will give to you later and which the Committee may well think is superior to the Durham test. As far as I am concerned, the point I want to make and substantiate to you is that the M'Naghten case is totally unscientific; it was formulated in an era when there was no knowledge of psychiatry; it has been universally criticized both by medical experts and also by lawyers. If this committee were to recommend, instead of the Durham test, the American Law Institute statement or the Freeman test, I would be perfectly happy and I think perhaps Mr. Ryan and Mr. Beck may have something more to say about that.

Now, gentlemen, I do not want to take up too much time. I did provide you with what looks like a disturbing amount of reading material on the subject, but I thought that you would like to know what this is about and it would be very convenient if you were afforded some material. Before I do that, may I just give one personal statement to you. My interest in this case arose not only out of the fact that I practice law—I admit that criminal law is not a specialty of mine at all—I have had a few connections with criminal law—but because a constituent of mine, a young man by the name of Markel, also known as Robert Robertson was convicted of arson shortly after I was elected and sentenced to 24 years in the penitentiary. He gave himself up. He had burned down four or five different places; fortunately there was no loss of life. There were four or five charges. None of the things he did made any sense. It was not done for the purpose of revenge or gain, to receive insurance or anything like that. It was a clear case of some sort of a mental condition which gave him a kick out of burning places down when he had had a few drinks. He was sentenced to 24 years in the penitentiary, although later psychiatric evidence clearly established that he was a mental case. I will not try to use proper language to describe it.

His case was appealed to our court of appeal, which confirmed the sentence. There was a great outcry about this, to the credit of the press and the public. The matter was referred to the then Minister of Justice, I think it was Mr. Chevrier or Mr. Fleming as I recall it. A re-hearing in the Court of Appeal was ordered and the sentence was reduced to 12 years. This young man is now applying for parole. I think the parole board are considering his case after a few years. I do not know how he has got along; we hear very good reports that his mental condition has been cured. That is a problem for the parole board. But, the point is this. Here was a young man who gave himself up, who asked for treatment who acted clearly under the influence of mental illness and who was sentenced to a criminal for 24 years. It was because of the interest I took in this case that I propounded this revision of the law. After study, I think I have found that the proposals are consistent with an enlightened view of criminal justice and deserve the most serious consideration of parliament.

Gentlemen, I have made available this vast amount of reading material. I know, from my own knowledge, that about the only time you will find it possible to read this material will be when you are listening to the speeches of your colleagues in the house. Nevertheless, if anyone is interested in the subject, I think you will find this material very well worth while. I seem to have misplaced my copy of the first item of the material which is headed, Criminal Insanity from M'Naghten to Durham. This was prepared by a young lady, whose name is a difficult one and which I cannot remember at the moment, in the research

department of the parliamentary library. I think you will find it to be an excellent summary of the situation in regard to the law and some of the observations on this matter.

It deals with the historical background, the M'Naghten case; on page 3 it covers the codification of the law in Canada, the substitution of the word "appreciate". It deals at the foot of page 3 with the New Hampshire decision. It discusses on page 4 the irresistible impulse test. It refers at page 4 to the Durham case of 1954 and reviews that particular case. It brings out the test which I have incorporated in the bill which is before you, that an accused is not criminally responsible if his unlawful act is the product of mental disease or mental defect.

Part 2 discusses the M'Naghten rule—Page 5—I will not delay over that, except to say that there is discussion of what is meant by knowledge that the act is wrong; the word "wrong" is ambiguous, it could be morally wrong or against the law.

The CHAIRMAN: We could have this printed as an appendix, Mr. Brewin. Would that be helpful?

Mr. BREWIN: Yes, that would be very helpful. Section 9 refers to—

Mr. GRAFFTEY: Before you proceed, Mr. Brewin, I would like to ask you one quick question. As I understand, your testimony up to now, the act as it now stands Section 16, subsections (2) and (3) embody the M'Naghten rule.

Mr. BREWIN: Yes.

Mr. GRAFFTEY: Subsections (2) and (3) embody the M'Naghten rule, to be replaced by your subsection (2), which embodies the Durham rule.

Mr. BREWIN: That is right.

I might say in connection with the statement that our subsections (2) and (3) of Section 16 embody the M'Naghten rule, that a very distinguished person, who was a partner both of your chairman and myself, Chief Justice McRuer produced a report that Professor Ryan may refer you to in 1953 on criminal insanity as a defence, in which a majority of the commissioners reported against a change in the law. The burden of Mr. McRuer's argument was that he felt there was a great difference between the words "appreciate" and "know". A minority report of her honour Judge Helen Kennear—maybe known to some of you—took the different view and said there ought to be a change in the law. I have a very great respect for Mr. McRuer, whom I worked with for many years. In this particular case I think his legal ingenuity carried him too far, because I do not believe that the refinement of meaning between "appreciate" and "know" is that significant.

I would like to refer you in that connection to the words of Mr. Justice Tignault at page 10 of this brief on criminal insanity, prepared by the research department. He says this in the case of Clark versus the King at page 630.

...although we have an express declaration by the legislature, the code really adds nothing to the common law; in fact the presumption of sanity of mind, involving criminal responsibility, is recognized in England as well as in all countries, and our inquiries need not carry us further, which are subject to the common law.

So, I think he takes the same view as I do, that there is not really any substantial difference.

Now, the memorandum from the library research department goes on and deals with the American system and deals also with the irresistible impulse test, which has never been accepted in England or in Canada or in a great part of the United States, which I am not certainly advocating.

Then it goes on to discuss the New Hampshire and Durham test which we are proposing here. I will not go into that because I have already summarized it for you. It deals with certain criticisms which have been raised about it.

Then it deals, at page 19, with what is called the Vermont test which is the same test, apparently adopted in the court of Vermont, as the American Law Institute model penal code. It was adopted in the case of *United States versus Freeman*, to which I am about to refer you. The conclusion of the writer of the brief is that criminal law at large, page 20, is under transformation. Several concepts are being reviewed and remain under evaluation.

In this general field the law of insanity deserves particular attention because the solution of the problems it raises needs not only the skill of the lawyer but also the psychiatrist. Fortunately, not all of us share the same philosophy and this makes it difficult to find an ideal solution.

It goes on to quote an expert on the subject, S. Glueck who has written a well-known textbook on the need for the law and the psychiatrist to draw themselves together.

Now, attached to that brief were a number of other documents; it is a bibliography, but I selected three as being particularly helpful. One is chapter XI of a textbook referred to here, *Mental Disability and the Criminal Law* is the title of it. The author's name does not appear on the document submitted. I myself was under the impression that it came from the American restatement on the matter. However, I just want to ask you to note a very few passages in this. At page 331, you will find a statement of the various tests which have been applied. First of all, 11—discusses the M'Naghten rule, the product rule, the model penal code and the Vermont test. You will see them all set out there. I would like to read from page 336. It says on criticism of the existing tests of criminal responsibility.

The question at bar, (i.e., the test for determining responsibility) far from being ordinary, is perhaps the most controversial problem existing in the criminal law today. The problem of articulating a test of criminal responsibility is essentially that of drafting a verbal formula which will enable the judicial process to discriminate effectively between those cases where a punitive-correctional disposition will benefit society, and those in which a medical-custodial disposition is proper. Although a crystal-clear definition of responsibility may be impossible and perhaps undesirable, an operational definition is not out of reach. Any definition of criminal irresponsibility should be consistent with the framework of our penal laws. In other words, such a test should be premised on the rationality of man and retain irrationality as a minimum criterion of insanity. Second, it should harmonize law and modern medical science, thus enabling the psychiatrist to make a maximum contribution unhampered by moral and legal abstractions and oversimplifications.

I will not read the rest, but on the same page, dealing with the M'Naghten test, there is a quotation from what is known as the Gower report, which is a report made by a Royal Commission in England, in 1953, on capital punishment.

Briefly, they have contended that the M'Naghten test is based on an entirely obsolete and misleading conception of the nature of insanity, since insanity does not only, or primarily, affect the cognitive or intellectual faculties, but affects the whole personality of the patient, including both the will and the emotions. An insane person may therefore often know the nature and quality of his act and that it is wrong and forbidden by law, but yet commit it as a result of the mental disease.

The chap Markel was a clear illustration of that, because Markel knew that what he did was wrong and gave himself up, but he had no control over his ability to handle himself under certain conditions. This document goes on to discuss the various tests and I will not hold you up on that, but I would ask you to turn to page 366 of this particular document. It criticizes the various things in detail, but this is the conclusion. It states:

It is desirable to broaden the class of the mentally disabled who are held criminally irresponsible without removing the issue from the jury.

My change of the law of course does not do that. The jury directed by a judge, after hearing the evidence, would still be the people who would decide the matter.

The M'Naghten and irresistible impulse tests define too narrowly the class of persons who should be hospitalized rather than imprisoned for their criminal acts. These tests also prevent psychiatric witnesses from presenting an adequate word picture of the defendant's mental condition because they are phrased in terms having little relevance to current learning in the field of psychology. The product test remedies both of these defects. However, the standard it sets is so vague that the jury has very little to guide it in resolving the conflicting evidence concerning the defendant's mental condition. There is a danger that the jury may rely unduly upon the expert, thus improperly shifting to the expert the jury's traditional responsibility for fact-finding. The Vermont and Model Penal Code test have had such limited practical application thus far that it is impossible to do more than speculate concerning the ability of the test to remedy M'Naghten without creating new pitfalls.

That is the conclusion and I think that is the conclusion of a good many American scholars and you will find, if you have time, that this is very valuable.

I have two more documents I would like to refer you to. One is in French, an extract from the Canadian Psychiatric Association Journal, an article by Dr. Lucien Panaccio and the French speaking members of the Committee will please pardon me if I do not attempt to read this in French, but I would call to your attention this article at page 228 where Dr. Panaccio expresses the opinion that the M'Naghten rules are based on a definition—this is my free translation—too simplistic and extremely limited of mental illness. Then at page 229: "It is ways the case that in a century of discussion and of criticisms on the subject of an excessively rigid arbitrary legal rule, that the M'Naghten rule should one day—that is to say, on July 1, 1954,—be rejected by the Court of Appeal in the District of Columbia in the no less famous case of Durham. The Durham test is much more in harmony with medical and psychiatric thought of our time. The

Durham rules do not seek to define with precision the terms 'mental illness' or 'mental deficiency' although the Hon. Judge Bazelon makes the following distinction as to the duration and origin of the two concepts".

At the bottom of the same column it says that the great advantage of the Durham rules is that they permit the psychiatrist to give evidence in medical fact and not just in moralistic terms. It makes it possible for him to speak the language of his own discipline without dividing the accused into that part where his knowledge is in question and that part where his will is in question. I hope that is a fair translation. Therefore the effect of this article is that this, gentlemen, is medical evidence and there is a whole host of medical evidence to this same effect.

The other document that I have given you is a decision of the United States Court of Appeals, 1966, in a New York case. Once again I will not ask you to look at the whole thing, but I will give you one or two brief references. On page 615, the following is stated:

We are here seeking a proper test of criminal responsibility. That we are not instead deciding the initial question—whether lack of such responsibility, however defined, should be a defense in criminal prosecutions—itself seems significant and worthy of at least some brief comment.

The criminal law, it has been said, is an expression of the moral sense of the community.

And perhaps that is why we in parliament are asked to deal with this.

The fact that the law has, for centuries, regarded certain wrong-doers as improper subjects for punishment is a testament to the extent to which that moral sense has developed. Thus, society has recognized over the years that none of the three asserted purposes of the criminal law—rehabilitation, deterrence and retribution—is satisfied when the truly irresponsible, those who lack substantial capacity to control their actions, are punished.

Then it goes on again to review the M'Naghten case and its background, and at page 618, at the bottom of the first column under (3), the following is stated, and I adopt this as the basis for my argument.

But the principal objection to M'Naghten is not that it was arrived at by this extraordinary process.

That was how they arrived at their decision in court.

Rather, the rule is faulted because it has several serious deficiencies which stem in the main from its narrow scope. Because M'Naghten focuses only on the cognitive aspect of the personality, i.e., the ability to know right from wrong, we are told by eminent medical scholars that it does not permit the jury to identify those who can distinguish between good and evil but who cannot control their behaviour. The result is that instead of being treated at appropriate mental institutions for a sufficiently long period to bring about a cure or sufficient improvement so that the accused may return with relative safety to himself and the community, he is ordinarily sentenced to a prison term as if criminally responsible and then released as a potential recidivist with society at his mercy. To the extent that these individuals continue to be released from prison because of the

narrow scope of M'Naghten, that test poses a serious danger to society's welfare.

I call that to your attention, because it is often thought that those who want a modernization of the rule are solely sentimentally interested in the person who commits the crime rather than the victims of crime. The opposite is partly the case as this passage indicates. Then at page 619, in the second column, it states:

Psychiatrists are not alone in their recognition of the unreality of M'Naghten. As long ago as 1930, Mr. Justice Cardozo observed that "everyone contends that the present definition of insanity has little relation to the truths of mental life." And Mr. Justice Frankfurter, as a witness before the Royal Commission on Capital Punishment, declared with his usual fervor: "I do not see why the rules of law should be arrested at the state of psychological knowledge of the time when they were formulated. I think the M'Naghten Rules are in large measure shams. That is a very strong word, but I think the M'Naghten Rules are very difficult for conscientious people and not difficult enough for people who say, "We'll just juggle them."

The test which they adopted is set out at page 622 and there is discussion of the Durham case. Paragraph 5 is the statement of the test that was adopted by this court and which some of the Committee may think is better than the Durham test adopted in my draft bill. As I have said, I do not mind, as long as the Committee recommends that we get away from the M'Naghten test and adopts either of these tests.

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

That may be the test which you people would want to adopt.

MR. GRAFFTEY: Do you consider that a bit narrower than the test you have adopted in your amendment?

MR. BREWIN: It is, but it does give a little more precision to a standard that could be given to a jury. The standard that I have suggested merely implies causation, a causal connection between the mental condition and the act. This defines a little more fully what the presumed connection is, and therefore it is a matter of opinion. If you have a chance to read some of this material, you will see that some experts prefer one and some prefer the other, but they say in this decision that both tests are an infinite improvement over the M'Naghten rules, and that is the point I want to make.

Gentlemen, I think I have taken up a lot of your time; but I think you will find that it is a subject worth your while to look into and study. I hope you will be able to recommend a change in the law. It seems to me that it would be a very useful thing, that Canada would be in the van. In 1953 the English committee recommended it and the American courts have recommended it, and I have a statement here from Judge Bazelon. I mentioned this in *Hansard* when the matter came up first. He wrote the judgment in the Durham case and he said:

In this century the chorus of protest against M'Naghten's rule has become deafening. In a poll taken a few years ago, 80 per cent of 200 American psychiatrists pronounced these rules unsatisfactory.

I would like to quote one other thing. A famous American judge said this:

A society that punishes the sick is not wholly civilized. A society that does not restrain the dangerous madman lacks common sense.

I think that what I propose is consistent with not punishing the sick and therefore advancing in civilization and still restraining the dangerous mad man and thereby treating the matter with requisite common sense.

The CHAIRMAN: Thank you very much, Mr. Brewin. Is it agreed that the article "Criminal Insanity" prepared by the research branch of the Library of Parliament dated November 17, 1966, Chapter Eleven Mental Disability and the Criminal Law, extracted from the Mentally Disabled and the Law—the author of which is not mentioned, but referred to in the first item I have mentioned—the article on M'Naghten versus Durham rules by Dr. Lucien Panaccio which is in French and the report from the United States of America, Charles Freeman, appellant and the United States Court of Appeals Second Circuit, be printed as an appendix to today's proceedings?

Mr. AIKEN: Mr. Chairman, could all these people be called as witnesses?

The CHAIRMAN: That is what I am suggesting, but I would like to have your comments.

Mr. FOREST: Could we not restrict it to what was prepared by the research branch of the Parliamentary Library?

The CHAIRMAN: That is up to the Committee.

Mr. BREWIN: I have furnished the Committee—or the members here at least—with copies of these other documents.

The CHAIRMAN: I am not thinking of the Committee, I am thinking of people who may read today's proceedings and everything could be in one place.

Is it agreed that we print only the one from the Library on their research and that the others be exhibits to today's proceedings?

Mr. HONEY: Before a motion is put, could you advise the Committee on how wide is the distribution of our proceedings. Is this going to law schools and universities?

The CHAIRMAN: Could you tell us?

The CLERK OF THE COMMITTEE: It goes to universities and university libraries and law school libraries. They get this free through the Queen's Printer. There are also many other people who subscribe to this through the Queen's Printer.

Mr. AIKEN: Mr. Chairman, I think the memorandum which was prepared by the research branch could be useful, but the other documents are copies from reports that are available elsewhere, and I sometimes hate to load down our printers, unless it is necessary.

The CHAIRMAN: I knew it was a lot. It is agreed that only the article prepared by the research branch of the Library of Parliament dated November 17, 1966, be printed as an appendix? Is that agreed?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: I see Mr. Tolmie has his hand up to ask a question, but we have Professor Ryan and Professor Beck and it is now 12 o'clock. I wanted to

give these distinguished gentlemen an opportunity to be heard. If there are any questions of Mr. Brewin, I would suggest that you make them as concise and brief as you possibly can.

Mr. AIKEN: Perhaps we could go ahead with the other witnesses and question Mr. Brewin and the witnesses together.

The CHAIRMAN: Is that agreeable to you, Mr. Brewin?

Mr. BREWIN: Yes, but I might say before you go on that Mr. Arthur Martin said that he would be willing to give evidence to this Committee. He is an expert on this and therefore if you did want to hear him, it is possible to arrange it. Perhaps Committee members may want to question me further when they had heard all the other witnesses—not that I am trying to evade cross-examination—but perhaps this would be best.

The CHAIRMAN: What is the thought on that? Would you all like to hear Mr. Martin?

Mr. AIKEN: I think this would be very useful.

The CHAIRMAN: Mr. Brewin, we will leave it to you to arrange for Mr. Martin's appearance.

Without any further remarks by the Chairman, I will call on Professor Ryan to make his statement.

Professor H. S. RYAN (*Faculty of Law, Queen's University*): Mr. Chairman, my colleague Professor Beck and I are honoured by being permitted to address the Committee on this subject and I should say at the beginning, that we are making a joint submission. I will attempt to bring out certain features of the present situation which have been referred to in a mimeographed note, which I understand has been circulated among members of the Committee, and Professor Beck will discuss alternatives to the present rules.

I should say we agree that it is highly desirable that the provisions of the present Section 16 be replaced by another rule, but in our opinion it would be better if the new rule were the rule recommended in the American Law Institute Model Penal Code rather than the Durham rule. This part of our presentation will be dealt with by Professor Beck.

I would like to begin by bringing to the attention of the Committee the fact that not every person who offends, or commits a criminal offence, is mentally ill by any definition of mental illness. Of those who are mentally ill, a very large majority will not be found to be insane by any definition of insanity which is likely to be adopted. In fact, I think it would be improper if all persons who are mentally abnormal and mentally disturbed were found to be insane and free from criminal responsibility. This means—and I will refer to it later—that while we strongly urge that the bill be passed in the amended form which we will recommend, at the same time we would urge the Committee—and we know it is not easy for a Committee such as this to depart from its terms of reference—to consider whether representations should be made to the government that there should be a complete examination of the whole area of the relation between the mentally abnormal person and criminal law. I will deal in some detail with some aspects of this problem in my submission.

I should point out first that mental abnormality affects criminal law and the penal processes in a variety of ways of which the defence of insanity is only one. It is true that a person who is insane, as defined in Section 16, is not criminally responsible for his conduct while he is in that condition. The number of people who are before the courts and found to be insane, either within this definition or within another's is very small. The other definition is that a person who is insane within the meaning of Section 524 of the Criminal Code is not fit to stand trial on a charge of a criminal offence and he cannot be tried while he is in that condition.

There is no definition of insanity in Section 524, but it is a different kind of mental condition as this word is interpreted in the courts from that defined in Section 16. A person may be sane within the meaning of Section 16, at the time he does an act; he may be insane at the time when he is brought to trial, either because he comes within the different definition, or because his condition has changed. Contrarywise, he may have been insane at the time of doing the act within the meaning of Section 16 and sane and fit to stand trial within the meaning of Section 524, when he comes before the court. If you think this is confusing, you are quite right.

The definition of insanity for the purpose of Section 524 is contained in my memorandum and it is substantially that he is unfit to understand the nature of the proceedings, the nature of the charge that is brought against him, and is incapable of properly instructing counsel for his defence. This is quite a different test from the test set out in Section 16.

There is a very specialized condition of mental abnormality, that of a woman who by a willful act or omission kills her newly born child, while the balance of her mind is disturbed—in the words of the statute—as a result of giving birth or lactation following birth. Under Section 204 of the Criminal Code, a woman who kills in this condition—and this refers to killing a child who is under 12 months of age—is guilty not of murder or of manslaughter, but of a special offence called “infanticide”. It is my respectful submission that these unfortunate women should not be charged with and convicted of any offence, but it is better to have them convicted of infanticide than to have them convicted of murder, as was formerly the law.

Mental abnormality of any kind is, of course, relevant to sentence, where a person is criminally responsible, but the court has to determine what to do about it. There is very little in the Code that directly deals with this and this is a most important problem. Section 638 of the Code provides for a suspended sentence and for probation, and a restricted form of suspended sentence or probation, can be imposed under Section 637, a sentence analogous to it. It is not provided for particularly in the Code, but it is a practice that is growing where the offender is found to be mentally abnormal and to require psychiatric treatment, it is made a condition of probation, or of a suspended sentence that he undergo such treatment. However, many persons who are convicted of offences, are sentenced to imprisonment and are found to be mentally abnormal or mentally ill. I may say that my experience in meeting these people began to a limited degree while I was in practice. As Mr. Honey will remember, I had a small amount of criminal experience in practice, but nothing extensive. However, during the past 9 years, while I have been teaching and studying criminal law and criminology, through my association with the John Howard Society and through my access to the

penitentiaries at Kingston, where I have had the opportunity of meeting and having numerous discussions and interviews, not only with members of the staff who are engaged in treating these people, and in particular Dr. George Scott and his psychiatric staff, but also members of the classification staff of these institutions. I have also had an opportunity of meeting a number of the inmates. I have now been able to add to this a limited experience on the Minister's advisory commission on the treatment of offenders of the Department of Reform Institutions. My experience in these fields, and my opportunity of studying the literature on the subject, have led me to conclude that this is an area which should be carefully reexamined in all aspects, and I mention this in passing. I do not wish the Committee to get the idea that I do not think this is an important bill, because I do and Professor Beck agrees with me. We agree that this is a bill that should be passed and we suggest the amended form; but we strongly recommend that the Committee urge that a very careful study be made of the treatment of these people who will be criminally responsible by any definition and most of whom go to prison, and most of whom are in the ordinary prison population.

I can tell you one thing and this will be echoed by every psychiatrist whom you ask and that is that the least favourable surroundings for treatment of these mentally disturbed and mentally abnormal persons, will be the ordinary population and regime of a prison, whether a penitentiary or a reformatory.

We would suggest that the Committee look into the provisions of the United Kingdom Mental Health Act of 1959, which provides for various forms of sentencing to psychiatric treatment of people who are mentally abnormal in one way or another, and are convicted of offences. Time will not permit a full discussion of this, but, if the Committee wishes, we could leave with you some material relating to the act which could be examined by other authorities. I realize that this Committee would not be able to look into it very thoroughly; but we would be very anxious that this type of investigation be favourably regarded by this Committee.

With regard to people who are mentally ill, or may be mentally ill, I should point out there are certain specific provisions in the Code for certain situations. For example, under Section 661, if a person is convicted of certain sexual offences—or one of them—and he is proved in a hearing conducted for the purpose to be what is called a dangerous sexual offender—which is a very broad definition, covering anyone who is likely to commit the offence of indecent exposure among other things—he must be sentenced to preventive detention and this means life imprisonment, subject to the possibility of parole. Many of these people—I say many, but there are not many of them who are convicted—a considerable proportion of those people who are sentenced under this provision, are kept in the ordinary inmate populations of prisons. Others are kept in very strict segregation in conditions which you would think would be inappropriate for caged animals. I think there is one thing that can be said for these people and that is, if anything can be done for them at all, it cannot be effectively done for them in a prison.

Something is being done for narcotic addicts and, as you know, the new institution Matsqui out in the west will take some narcotic addicts from western Canada and one will be introduced here. The main proceedings for the treatment of people who appear to be mentally ill are procedural.

Under sections of the Code, referred to in my memorandum, a person coming before the court who appears to be mentally ill, may be remanded for observation for a period of not more than 30 days. A considerable number of these people are found to be mentally ill and in Ontario, where certified, are kept in mental institutions and may never come before the court. Those of you who have followed the Fawcett case,—which created a great controversy in Ontario and is mentioned on page 4 of my note,—will remember that there was a great deal of dissatisfaction, because Fawcett was never tried on the criminal charge that were brought against him. The fact that people who are certified and thus removed from the frame of the criminal process, are not tried, and it is never determined whether they actually committed the conduct charged against them is a weakness in this proceeding, because the offence may hang over him for the rest of his life. There is no limitation period for most indictable offences in Canada, and unless the charge is disposed of in some form or another, you could in theory be tried at any time as long as you are alive.

I should point out for the members of the Committee also that if a person is found to be unfit for trial by reason of insanity, or to be insane under Section 16 and therefore not criminally responsible, he does not go free. There is a popular misconception that such a person is released in some way. In fact, under the Code, the provisions of which are referred to in my memorandum, such a person must be kept in strict custody and then turned over to the provincial authorities where he is detained during the pleasure of the Lieutenant Governor. In practice, many if not all of these people, are detained in provincial mental hospitals. In Ontario they are nearly all kept in Penetanguishene, which is a maximum security institution and I mean "maximum security". If you ever visit it, you will see why many people think that being sent to Penetang is a fate that is only just not worse than death. There are many offenders and their counsel who would prefer to see a man convicted and sent to prison, rather than sent to Penetang. This is a misconception, because they really are better off in Penetang, but because of the degree of security involved, and also because until recently there was no way of securing release of these people, it was felt that the man would be better off serving a long term than possibly spending the rest of his life rotting away in maximum security.

Recently, a sort of discretionary provision for inquiry by the Chief Justice of Ontario at the request of the Attorney General, has been employed in a number of cases, but no one has a right to have the question of termination of his detention brought up before any tribunal, either in Ontario or in any province. There is some procedure provided in Saskatchewan, but I understand it is not very effective.

Mr. AIKEN: Mr. Chairman, on this point, would a habeas corpus not have been assisted?

Mr. RYAN: No, habeas corpus will not be a release; it has been tried.

Mr. AIKEN: I would like to interject and say that we have another bill before the Committee, which deals with this very subject.

Mr. RYAN: I will not dwell on it, then.

Mr. AIKEN: We also had Dr. Boyd before the Committee from Penetanguishene, who gave very extensive evidence. You are supporting him, and you

evidence is very useful to the Committee, but there is another bill along this very line that you are suggesting.

Mr. RYAN: I would strongly urge that this bill be favourably considered, if it provides for some form of review of detention of people who are held under Section 527, if I remember correctly—as a result of being found to be not guilty by reason of insanity, or to be found to be insane and unfit to stand trial. I will not say any more on that subject right now.

I would strongly support what Mr. Brewin has said with regard to the relevance of the rules set out in Section 16 to the facts of life as they are now understood. In fact, the test is one which cannot realistically be administered. The courts manage to struggle along with it only by, in effect, employing other tests and those psychiatrists who can express their scientific knowledge, in terms of Section 16, do so only at the expense of some distortion of terminology.

There are many psychiatrists who cannot do that, with the result that there are marked differences of opinion among witnesses in trials where the issue of insanity is raised. These differences of opinion do not create a popular belief that the process is reasonable or just. I have a letter here from one psychiatrist who complains very strongly about this procedure. He refers to the case of Matthew Gary Smith, the beatle wig bandit, who was convicted of capital murder following a robbery and murder in Toronto, and who committed suicide afterwards. His psychiatrist had to do with the examination and treatment of Smith in the institution and says he was undoubtedly deeply psychotic, but conflicts of opinion by psychiatrists on the question of whether his psychosis brought him within Section 16, led to his conviction.

I will not attempt to outline in detail the pattern of mental abnormalities existing or recognized by modern science as I have attempted to set out in my memorandum, but you will notice that it extends into three particular fields. One is the field of the psychosis, where the patient is strongly dissociated from reality. Another is the field of epilepsy, where the patient is in the grip of forces which are perhaps electrical or chemical in their nature, which compel him to engage in conduct which is often violent and apparently criminal and intentional and sometimes apparently motivated. Sometimes the actor appears to intend to kill, but in fact he is in a state of automatism, which will pass away.

The third group is the group of people who are not dissociated, but are either neurotic or have distorted personalities, such as the psychopathic personality, or the sexual deviate who are led by very strong propensities and tendencies of the personality which perhaps are resistible, but are not in fact resisted, to commit anti-social conduct again and again. In this last group, these people I do not think will be found insane by any test and yet these are a considerable part of our offenders and of the inmates of our institutions. It is for these people that I suggest we should look into the possibility of legislation such as the mental hospitals act. Acknowledging that, it is extremely difficult to bring a deeply psychotic person, who should be found not criminally responsible, within the existing test.

It is quite clear that it is impossible for a person, for example, to have specific delusions and to be in other respects sane. We are just talking about a condition that never exists in fact. This is clearly the result of what psychiatrists have learned and are teaching us. It is also very rare that you find a person who

is incapable of appreciating the nature and quality of the act, whether according to Chief Justice McRuer's definition, or whether according to a narrower definition—if there is one—or of knowing that the conduct is wrong. The offender very often knows what he is doing is wrong, but he is incapable of conforming his conduct to the requirements of the law in the language of the American Law Institute test and it is for this person that we recommend that the bill be amended.

To repeat what I said at the beginning, in our opinion, the Durham test, if it can be worked—and it is very difficult to get psychiatrists to agree that it can be worked—and properly employed, it would seem to exclude from criminal responsibility some people who, in our opinion, ought to be criminally responsible, but for whom a special punishment or regime should be administered. It is for this reason that Professor Beck and I are not recommending that rule. I think I will bring my remarks to an end. Unless there are some questions members of the Committee may wish to ask, I will now ask Professor Beck to take over.

Mr. MATHER: Mr. Chairman, I understand the witness does not favour the test as suggested in the bill that is before us, although he goes along with the general tendency or idea behind the bill, am I right in understanding that he prefers the American Law Institute test?

Mr. RYAN: Yes.

Mr. MATHER: Would you mind very briefly citing that test.

Mr. RYAN: Professor Beck is going to deal with that.

Mr. MATHER: That is fine.

Mr. RYAN: He will deal with that part of our submission.

Mr. TOLMIE: I do not want to generate a long discussion, but I have one brief question. I think what you said, in effect, is that we should have a change in the rules, but also there is a great number of inmates who are not legally insane but have emotional problems. This is accepted, but what has always bothered me is this one question. We acknowledge the fact that we should have more psychiatrists, not only generally speaking, but those who are interested in criminal law and criminal behaviour. How do we achieve this desirable end of getting more psychiatrists, in the first place—I know this is perhaps out of your field—and getting them interested in criminal behaviour and then getting them interested in going to the prisons to do something about it?

Mr. RYAN: These are all very good practical and important questions. The first question I hope is one that will be solved by the pending extension of an expansion of medical faculties in a number of universities. This is a tremendously expensive and difficult operation, but it is under way. The second problem is one that has been a very real problem, but I think—at any rate, at Queen's—witness an increased interest in the department of psychiatry in the problem of the delinquency in psychiatry. I believe this trend is going to be effective in the near future. Of course, even at that it will take 10 years before you have a very large increase in the number of psychiatrists. At the same time, the policy of increased treatment of mentally ill persons in society, should mean there is more space in provincial mental hospitals.

The Commissioner of Penitentiaries, in his last report, seems to be very pleased with the fact that the number of inmates who are transferred to mental hospitals is going down. It is less than a quarter of what it was some time ago. In my own mind this is not a good thing and that it would be better if we had more inmates being treated in provincial mental hospitals. It might be more expensive, but there the facilities exist, the staff exists; they do not exist adequately in penal institutions.

I do not want in any way to disparage the very devoted work that is being done by the psychiatric staff of penal institutions, but there just are not enough of them to begin with, and also the surroundings and the atmosphere of the penal society are entirely hostile to therapeutic treatment of these people. It would take a whole lecture to discuss the nature of the society of a penitentiary, but it is a very hostile society.

The third question is, of course, to offer them (a) a decent salary and (b) decent conditions to work in. It is possible that the proposed creation of medical psychiatric units in each penitentiary region—one is proposed for Millbrook near Kingston—will provide for both of these conditions. I must say that I strongly support this development in the penitentiary service. I only wish it were given higher priority. First priority is being given to super maximum institutions, which to my mind are bastilles. If they gave first priority perhaps to classification and then to the medical psychiatric units, the result would be more favourable.

Mr. TOLMIE: You suggest a segregation within the penitentiary area?

Mr. RYAN: For many of these people yes, but not in the present form. If you go into a psychiatric ward in a penitentiary today, you would be shocked by the conditions. The staff are not to blame, because they cannot help it.

Mr. TOLMIE: That is the reason I brought the question up. I was down at St. Vincent de Paul and found out they had one part time psychiatrist for about 900 inmates, and I saw the facilities.

Mr. RYAN: About one third of those people probably need psychiatric treatment of one form or another.

The CHAIRMAN: Professor Beck, you may remain seated.

Professor STANLEY BECK (*Queen's University*): Mr. Chairman and gentlemen. Mr. Brewin and my colleague, professor Ryan, have dealt rather fully with the problem and all I really want to do is, in a very brief way, go over the objections to the M'Naghten rule, the alternatives proposed to the Durham rule and why we prefer the A.L.I. tests. As I say, Mr. Brewin has gone over this quite adequately and I would just like to re-emphasize the defect in the M'Naghten rule, which is enacted in Section 16 of the Criminal Code, with one change. Perhaps one important change is that word "no" which was the word used originally in M'Naghten has been changed to the word "appreciate" in section 16. It was that word that former Chief Justice McRuer seized on when his Royal Commission report on insanity he advocated that there had been no change.

To start with M'Naghten, it cannot be emphasized too strongly I think that the M'Naghten rules are a pure accident of history. It is not generally known, at least at the trial itself of Daniel M'Naghten, the work of Dr. Isaac Ray, who was

one of the earliest psychiatrists in the United States, on medical jurisprudence which was and is a classic, was quoted to the jury by Chief Justice Turdal. Dr. Ray's book contained the most enlightened views, at the time, on the subject of mental illness and criminal responsibility. He particularly criticized the right-wrong test. New, the right-wrong test really derived from the so-called wild beast test, of the 15th century.

The law has always been disturbed, before there was any knowledge of mental illness, as we know it today, about the problem of excusing from responsibility those who to the layman's eye, clearly cannot help their conduct and who ought not to be held responsible for their conduct. As a result, the law came up with such a crude test that the defendant would be excused if he did not know what he was doing, no more than a wild beast. In the 18th century, the so-called wild beast test was changed to the right-wrong test. That was the state of the law at the time of M'Naghten's trial. At the trial, Dr. Ray's work was quoted by Chief Justice Turdal and the jury was told that the human mind is not compartmentalized and that a defect in one aspect of the personality could spill over and affect other areas which medical science knows to be the fact today. That is, you cannot abstract out of the total personality one element, the cognitive element, that is the ability to know right from wrong. The human mind just does not work that way. You cannot abstract out emotion, will and effect in that way. The total personality is affected by any kind of mental illness. You cannot divide the mind up into five or six areas and say the fourth area is affected, but the first, second, fifth and sixth are not. That is just a fictitious view of the human mind and yet that is what the right-wrong test required. Dr. Ray called the knowledge of right and wrong a fallacious test of criminal responsibility; therefore, Daniel M'Naghten was acquitted, by reason of insanity.

As you know, because of the political overtones of the attempted assassination of Sir Robert Peel, a great human cry arose at the time and Queen Victoria herself was involved and as a result the House of Lords summoned the judges to take their opinion on what the test should be in regard to the law of insanity. Interestingly enough, Chief Justice Turdal, who presided at M'Naghten's trial, also presided at the hearing at which judges gave their opinion and in giving their opinion, in face of the political pressure of the time, they abandoned the test that had been applied at M'Naghten's trial and reverted to the right-wrong test, the so-called M'Naghten rules. Therefore, the M'Naghten rules did not arise from Daniel M'Naghten's trial; but they arose from the opinion of the judges that was taken by the House of Lords after the Queen herself had intervened in the face, if you like, of the pressure of the time. At the time when medical science and the science of psychiatry was beginning to develop and just at a time when Dr. Ray's work was first used by the English courts, the accident of history turned it around and they reverted to the 15th century right-wrong test, which has no basis in reality at all.

To come right up to the present day, the English Royal Commission on Capital Punishment considered the matter in its review. The review lasted for four years, 1949 to 1953 and they articulated the basic defects of the M'Naghten rules. They said:

They are not in harmony with modern medical science which, as we have seen, is reluctant to divide the mind into separate compartments—the intellect, the emotions and the will—but looks at it as a whole

and considers that insanity distorts and impairs the actions of the mind as a whole.

Most importantly, the Royal Commission pointed out that if a criminal offender, who had been acquitted on the ground of insanity, did not know right from wrong, you would not be able to run a mental institution. If a man could not pay attention to the commands of those who were in charge of the institution it would be impossible to run it. They can verbalize; they can say "this is right and this is wrong". They can obey orders, but the point is that they have no appreciation of reality, as we understand it. They are not able to make a rational choice among a set of alternatives which they appreciate. Because you can tell a person in a mental institution if he does thus and so, he shall be punished or shall miss a meal and he does it, that does not in any way indicate that if you let him out in society he will be able to conform to the rules of society.

The right-wrong test is wholly fictitious and has no relation to the reality of the situation at all. They do know, in a general way, that their act is wrong, and the Royal Commission cited many examples. Take the case of a person who is schizophrenic who is suffering from a melancholy, a deep state of melancholy, and in that state will murder one of his children. That person can sound like the most rational person in the world to you, if you talked to him, he would say, yes, he knew it was wrong and knew it was against the law. Clearly the person is a psychotic; he has no appreciation of his conduct and that is really what matters.

We now come to the Durham test and the court in Durham, after a review going right back before M'Naghten, pointed out all these defects and quoted at length from the English Royal Commission. They also made the point, not only that the right-wrong test is fictitious, but it is wrong to base the test on any one symptom at all. No test of criminal irresponsibility in terms of insanity, should be based on any one symptom, it is just not the right-wrong test is the wrong symptom, it is that the test should not be based on any symptom. You must look at the mind as a whole and the individual as a whole. You must not abstract out of the personality one particular aspect of it.

Then the court laid down the Durham test; an accused is not criminally responsible if his unlawful act was a product of mental disease or mental defect. Therefore, the psychiatrist at that time would be able to testify, unhampered by any artificial concepts as to right and wrong and the jury would then be able to decide on the basis of all the evidence—whether or not the accused should be held criminally responsible. In other words, they would, on the basis of the evidence, answer the question: Was the unlawful act a product of mental disease or mental defect? There has been a great deal of debate about the Durham rule ever since, and certainly it has the merits of doing away with the fictitious test of M'Naghten. However, it has been criticized on a number of grounds.

The first ground is it is said that the Durham test takes the essential question away from the jury and it does so in this fashion. If you put a psychiatrist on the stand and he testifies as to the mental condition of the offender, and then you ask the psychiatrist, was the act a product of mental disease or of a mental defect and he answers "yes" to that question, then for all intents and purposes you have taken the question away from the jury. You have made the psychiatrist the finder of fact, rather than the jury. The jury in our system—and I think it must be this way—are the ones who answer the essential question as to the criminal responsibility or not.

Another objection to the Durham test is the idea of mental disease. Mental disease itself is an uncertain concept; uncertain, not in the sense that psychiatrists will disagree about any basic diagnosis, but uncertain in the sense that psychiatrists themselves do not agree on what constitutes mental disease, particularly over states of psychopathy. Some psychiatrists will say that a psychopath is suffering from a mental disease and other psychiatrists will say he is not; therefore, it is that kind of disagreement in which there is no accepted definition among psychiatrists themselves of the term "mental disease" which makes it a dangerously vague term to be a critical part of a rule of law on criminal responsibility.

The third criticism of Durham is the term "product" is in itself inadequate. The idea of the conduct being the product of mental disease repeats, in a way, the error of M'Naghten. That is, behaviour and mental illness are inseparable and you cannot say that the behaviour is a product. You have to look at the personality as a whole, and behaviour and disease are really two sides of the same coin, and it is very difficult to draw the product test. If it was a but for test; in other words, if he had not committed the act but for, then you can almost never give a negative answer, because of the unity of the personality, which is essential to modern psychiatry. It was for these reasons that the American Law Institute—and I think I should just take a moment to say what the American Law Institute is.

It is an organization composed of judges, practitioners, law professors and those whom they second to the institute, depending on the study they are doing. They are doing some of the most advanced work, not only in criminal law, but in all areas of the law in the United States and they draft model codes. Their most successful so far, I suppose, being their model corporations act and now we have the model penal code, which is a result of 10 years work by the leading men in this field and the leading doctors in this field in the United States. After some consideration they rejected the Durham test and they made particular reference to the ambiguity that is inherent in the term "product". If "product"—and I am now quoting the American Law Institute:

If product is interpreted to call for a standard of causality less relaxed than but—for cause, there are but two alternatives to be considered:

- (1) a mode of causality involving total incapacity, or
- (2) a mode of causality which involves substantial incapacity. But in either of these causal concepts is intended, the formulation ought to set it forth.

It is that formulation that is set forth in the American Law Institute's draft. The American Law Institute test is this:

1. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity—

Now, you see it is not total incapacity, because even the most serious schizophrenic will not be wholly divorced from reality and you cannot put this thing in terms of black and white, in terms of right and wrong. The test is one of substantial capacity either to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of the law.

The heart of this really is the lacking of the substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. This test, as you see, leaves a psychiatrist free to testify as to what, in his opinion, is the mental state of the offender at the time he committed the offence. The question then is left to the jury. On the basis of all the evidence, did the accused lack a substantial capacity to conform his conduct to the requirements of the law. Therefore, the essential question is left to the jury and the psychiatrist is not hampered by artificial rules. Again, it is important to emphasize that such a verdict does not mean that the accused is set free, but rather he is confined to a mental institution.

As Mr. Brewin has told you, the United States Court of Appeals for the Second Circuit which I may say is the most influential and respected Circuit Court of Appeals in the United States just last year adopted the A.L.I. test for the Second Circuit. The state of Vermont, with some modification, has adopted the A.L.I. test in its statutes and the Courts of Appeal for the Third and Tenth Circuits in the United States have also—with minor change in wording—reformulated the M'Naghten rules in terms of the American Law Institute's test. What we support basically is the American Law Institute test.

I should say, to come back to Durham, is that the Durham rule itself would be a vast improvement on M'Naghten and Professor Ryan and I, do not, I would suggest, strenuously object to Durham; it is just that we think the A.L.I. test is better. The important point is that Section 16 should be changed. Section 16 enacts in a Criminal Code that we use in 1966, a 15th century test of mental state and of criminal responsibility that has no basis in reality, and it just ought not to be used in the administration of criminal justice. A psychiatrist ought not to be faced with that kind of question, whether a man knows right from wrong. In the first place it is not the kind of question that you can give an answer to, because he does not know. There is just no way of measuring in psychiatric terms whether the man knew right from wrong. He must give his evidence in terms of the man's mental condition.

The important thing then is that Section 16 be altered. Just in brief conclusion, I would like to support what Professor Ryan said in terms of the Criminal Code and say the whole Code needs looking at, but nonetheless the whole relation of mental illness to criminal responsibility ought to be investigated, because there are many people who are now convicted of crimes and sent to prison, who ought to be treated for the particular mental illness that they are clearly suffering from, and a prison is no place for them. In fact, in the penitentiary system you have a recidivism rate of about 60 or 65 per cent, attesting to that fact that these people ought to be treated in proper hospitals.

We would urge the Committee to look at the English Mental Health Act of 1959. This is a far broader question than Section 16. Section 16 is unfortunately inextricably bound up with capital punishment and is used primarily in capital cases in Canada, because both counsel and defence will take their chances with the mental hospital rather than with the possibility of capital punishment; whereas the test of mental capacity ought to be used in a whole variety of lesser offences for which people ought to be treated.

I might point out that Durham, for instance, was convicted of house breaking; this was his offence. Freeman, in the Second Circuit case which adopted the A.L.I. rule, was himself a narcotics addict, so there are a whole variety of

offences for which the test of mental irresponsibility ought to be used, rather than just in the capital cases, which is not the case in more than 90 per cent of the cases in which Section 16 is invoked. The Mental Health Act of 1959, of England, ought to be looked at in relation to criminal law in this country. That is all I have to say.

The CHAIRMAN: Thank you very much, Mr. Beck.

We have two papers here. Mental Abnormality and the Criminal Law, the Present Situation, which were commented on by Professor Ryan and then we have the alternative to the M'Naghten rules commented on by Professor Beck. I would take it that the two of them constitute the brief of Professor Ryan and Professor Beck and I was wondering if the Committee agrees whether they should be printed as appendices to today's proceedings?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: The meeting is now open for questions.

Mr. RYAN: I would like to ask Professor Beck how he distinguishes the Durham test from the A.L.I. test with respect to the psychiatrist as an expert witness giving his opinion, and taking the decision away from the jury. In the A.L.I. test is it still not possible for counsel to ask the expert psychiatrist whether in his opinion there is substantial incapacity?

Mr. BECK: Yes; there is no doubt about that. A psychiatrist, by defence counsel, is always going to be asked that sort of question, but I think that is a danger you are going to have regardless of the type of insanity test that you have. For instance, under Section 16 at the present time, counsel would ask: Did he have the capacity of knowing right from wrong, did he know right from wrong? He will try and get the psychiatrist to answer the question in terms of the test he formulates. I do not think there is any getting away from that. What the A.L.I. test does is broaden it somewhat, so that kind of question would not be asked, but that rather the total mental condition of the individual would be brought out. I do not think there is any escaping that difficulty. Counsel will always formulate his questions to the psychiatrist in terms of the test you lay down.

Mr. RYAN: I should think that would be his main object, if either test—

Mr. BECK: Yes, I think so.

Mr. RYAN: That would be his main object—

Mr. BECK: Except that very few psychiatrists will give counsel that kind of a black and white answer; they will give a much broader answer. Indeed, very few psychiatrists, if any, will give an answer to the right and wrong question. They will always rephrase their answer in terms of capacity to appreciate the act.

Mr. RYAN: Would it not be easier for a psychiatrist to say that in his opinion it was a product than it would be to say that it was a substantial incapacity?

Mr. BECK: Well, if he says it is a product that is the sole question, but whether he lacks substantial capacity to appreciate the wrongfulness of his conduct is more a matter of opinion, given his whole mental condition; it is just somewhat broader. It would not be a black and white answer to is the act product of the disease.

Mr. H. S. RYAN: I have some comments by psychiatrists that might be relevant.

Mr. RYAN: I would like to hear them, because this rubber stamping by the jury of a psychiatrist's opinion is—

Mr. H. S. RYAN: These are not directly relevant to your question, but they are in a way. Dr. Boyd, who has been referred to, is the superintendent of the Ontario Hospital at Penetang. He is not thoroughly happy with either the Durham rule or the A.L.I. rule. He is far from happy with the present provisions of Section 16, even as interpreted rather broadly by the McRuer report. In regard to the Durham rule, he says:

I do not know whether the accused should be excused if mental illness has played any part in the criminal offence, but whether the unlawful act needs to be entirely the product of mental disease or mental defect.

With regard to the A.L.I. rule he feels uneasy about the last phrase: "to conform his conduct to the requirements of the law. He says:

I am afraid with our present state of knowledge we can rarely state whether a patient could not, or merely has not, conformed his conduct to the requirements of the law.

Dr. R. J. McCaldon, who is in practice in Kingston and was for a time an associate of the forensic clinic in Toronto and has also been associated with Dr. Scott in the psychiatric work in the penitentiaries; says:

In my mind the Durham rule could be interpreted so liberally that the whole concept of individual responsibility would be lost to justice.

Mr. RYAN: This is a weakness—

Mr. H. S. RYAN: He does not comment on the other rule. He says:

If I understand the spirit of the law in this matter it is that no person who commits a crime as a result of a psychosis; that is, a mental illness so severe that the individual loses touch with some significant aspects of reality, should be held responsible. As you know, the present ruling does moderately effectively designate as insane those people who are suffering from psychosis. Is there not some rule which could be formulated which would effectively designate the people suffering from a psychosis and yet leave responsible, people who are psychoneurotic, sociopathic, or have other personality problems?

Mr. RYAN: Is the very fact a criminal charge is laid against a suspect not going to arouse in the minds of even a psychiatrist some suspicion of a possible mental disease, and prejudice him somewhat in his approach?

Mr. H. S. RYAN: Yes, I know; we all want to give the explanation which is appropriate to our discipline, that is right. But I think you will find that psychiatrists are quite responsible about this. In particular, there has been a great outcry among American psychiatrists to the effects that they do not know how to say whether conduct is the product of mental disease and they are afraid; if the issue is raised, as Professor Beck has said, there is no way of demonstrating that it is not the product of mental disease. Once you prove

mental disease or defect, there is only one answer possible, as far as they know. Dr. Boyd suggested the same thing indirectly.

Mr. RYAN: There is still lots of room, I suppose, for psychiatrists to differ, in any event, no matter which test is used?

Mr. BECK: That is right. There will always be more than one psychiatrist testifying. It is only in severe cases, even if you broaden the rule, in which insanity will be invoked as a defence by defence counsel. There is very little, if any danger, of lessening the bounds of criminal responsibility in this area.

The CHAIRMAN: Gentlemen, it is now 1 o'clock. Mr. Ryan may have some more questions, Mr. Aiken has a question or two and I know Mr. Grafftey has, so I would suggest that we get on as quickly as possible. Perhaps Mr. Brewin will have some comment at the closing about some of the questions.

Mr. BREWIN: I would like to make a one sentence comment.

The CHAIRMAN: I do not want to forgo anyone, but I just want to point out that it is one o'clock and this has been a long, but very interesting session.

Mr. RYAN: I will pass.

Mr. AIKEN: I have one question, Mr. Chairman. The American Law Institute test would substitute a wording something of this nature, that a person lacks substantial capacity to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of the law. I cannot see very much difference between that and the right-wrong test. Have we gone around the complete circle? This is just a fancy wording of the same thing.

Mr. BECK: I do not think so. The difficulty with the right-wrong test is that a seriously disordered accused will be able to verbalize the answer to that kind of question, to say whether he knew it was right or whether it was wrong; whereas the A.L.I. test talks about substantial capacity to appreciate the wrongfulness of the conduct. I think there is necessarily inherent in that an appreciation of consequences, and appreciate means to truly understand the choice you are making and the effect of your actions, and in that sense looking at the mind as a whole, or to conform conduct to the requirements of the laws and therefore taking account of a variety of impulses, irresistible or—

Mr. H. S. RYAN: I think the substantial difference is in that last phrase. First, of all, there is the substantial incapacity, which is not a black and white distinction, and then the incapacity to conform conduct to the requirements of the law, which may exist even though the person is capable of appreciating the wrongfulness of the conduct.

Mr. AIKEN: Would it be fair to say that the A.L.I. test is not a reversal of the right-wrong test, but rather a refinement of it to meet modern understanding of the mind?

Mr. H. S. RYAN: It is not a complete abandonment of the right-wrong test.

Mr. BECK: It is a broadening of it to meet the realities of medical science.

Mr. GRAFFTEY: Following on Mr. Aiken's and Mr. Ryan's line of questioning, I think we all tend to listen to the witnesses and then put the definitions into our own language, and I want to make certain that my idea is correct. By adopting such an amendment, based on the A.L.I. test, would it be correct to state that in

fact we are broadening the notion and the concept of the *mens rea*, to the effect that in some cases intent becomes immaterial. We could go on and say that the man intended to kill, but could not help himself anyway.

Mr. H. S. RYAN: I think so. I think there is a danger. I always advise my students to avoid the use of the phrase "*mens rea*", because it is a phrase that causes confusion in the minds of many people. There is a danger in using that phrase anyway, but I think in principle what you say is right.

Mr. BECK: Not necessarily that that person might not be acquitted under the present test.

Mr. GRAFFTEY: My criminal law was the *mens rea*, the forming of the intent to kill, and now we are broadening this concept, are we not?

Mr. BECK: That is right. Let us say a person is suffering from melancholia, or a person is under the delusion that he is commanded to kill someone his acts are purposive in the sense that he will tell you that he intended to kill or he was commanded to kill. He is clearly a psychotic.

Mr. HONEY: Mr. Chairman, I have one or two questions. I want to say to the Committee that I am one of Professor Ryan's students, not in a formal sense, but I have learned many things from him across the counsel table in the years we practised in the same locality, and I am very pleased he is here with Professor Beck today. I just wondered, Mr. Aiken mentioned this on the A.L.I. test, would it be fair, and am I stating it correctly, that it is really a broadening of the generalization of the Durham concept? Take the first factor, the substantial capacity. Will that in effect encourage the courts to create a field of jurisprudence in interpreting, and give them some space to move out into, that the Durham test would not give them in interpreting, particularly, substantial capacity?

Mr. BECK: It is a jury question and it will almost always be a question for them. I think it gives them a little more elbow room. If you mean will more people fit within the test, or more people be found not guilty, by reason of insanity and committed to an institution, I do not know that that would be the case. I would not be prepared to say that more people will come within the test than come within the present Section 16, although I think they will. That really is not the heart of the matter. I certainly think it will give more elbow room both to the psychiatrist and the jury.

Mr. HONEY: It just seemed to me that it would probably give more elbow room than in the Durham test, which seems to be more specific. It might give the jury a better opportunity to give some meaning to the evidence of psychiatrists.

Mr. H. S. RYAN: We would hope so.

The CHAIRMAN: Are there any other questions?

Mr. FOREST: May I ask the sponsor if he agrees that the A.L.I. test would be an improvement over the Durham test?

Mr. BREWIN: Originally I said,—and I will stick to this—that I would be perfectly happy to see either test adopted. I do not find criticisms of the Durham test as compelling as do the two professors, for the simple reason that it seems to me that the criticism that it leaves, takes from the jury a thing that has already

been successfully demolished. I think "product of" implies a causal connection and leaves a very broad question to the jury, but it enables the psychiatrist to give the evidence about the mental state of the person and the jury to make a common sense decision.

I think some of the criticisms of the Durham rule are refinements, but the point I would like to make is that I do not think the fact that there is difficulty in finding a perfectly satisfactory test, which there obviously is,—the Durham test is not perfect, the A.L.I. test is not perfect,—should prevent us as legislators from meeting the challenge of getting rid of the Section 16 test, the M'Naghten test, which nearly everyone agrees is outdated and wrong. If the Committee, in its wisdom, were to recommend the A.L.I. test, or some variation of it, rather than the Durham test, then certainly my objective in introducing the bill would be fully met.

The CHAIRMAN: I would like to thank Mr. Brewin, Professor Ryan, and Professor Beck for your attendance here today and particularly for the very interesting information which you have supplied us with. Since many of us are lawyers, we are quite familiar with the M'Naghten rules. We do not have to practice too often with them, but it is a very interesting subject and it shows the development of the law and we do appreciate most sincerely your attendance here today. Thank you very much.

APPENDIX 12

Prepared by the Research Branch
Library of Parliament
November 17, 1966.

CRIMINAL INSANITY

(FROM M'NAGHTEN TO DURHAM)

(October 19, November 17, 1966)

The principle which governs competence to stand trial is simple. A person accused of crime is mentally fit to stand trial only if he understands the charges against him according to morality and the law. Apparently simple for the layman, the problem of criminal responsibility is one on which lawyers and psychiatrists, while they agree sometimes, are very often in conflict. Therefore it is of interest to study the law of insanity in various countries on a comparative basis. As a matter of fact, in spite of their common origin the laws of insanity have evolved somewhat differently in Great Britain, in the United States and in Canada. The criminal law of England should not be confused with the Canadian criminal law. Although the rules established by the courts in England have formed a historical background to the Canadian law, which is statutory, the jurisprudence founded on them in England does not constitute the Canadian law.

Consequently this paper will be divided into two parts; the first part will be a short historical background and the second will deal with the rules which govern the law of insanity. Comparison will be made between the different systems.

PART I—HISTORICAL BACKGROUND

Legal criteria of responsibility have been defined by the common law and set out in authoritative form in the "M'Naghten Rules" formulated by the judges in England.

In 1843 Daniel M'Naghten was tried in London for the wilful murder of Mr. Edward Drummond, the private Secretary to Sir Robert Peel, the Prime Minister. M'Naghten's history showed that for many years he had suffered from delusions of persecution and hallucinations as a result of which he had visited various countries in an attempt to escape from his persecutors. His complaints to his parents and to public authorities being unavailing, he became embittered, and with the object of drawing attention to his case, and of righting his supposed wrongs, he devised a plan to kill Sir Robert Peel. He watched for his intended victim and when he thought he saw his opportunity he shot Mr. Drummond under the mistaken belief that he was shooting Sir Robert Peel. It was clear during the trial that M'Naghten still thought he had shot the Prime Minister.

The Lord Justice Tindal at the end of the testimony and argument advised that the case be stopped".

"Are you satisfied that at the time the act was committed . . . that he had that competent use of his understanding as that he knew that he was doing by the very act itself, a wicked and a wrong thing? If he was not

sensible at the time that he committed that act, that it was a violation of law of God or of man, undoubtedly he was not responsible for that act, or liable to any punishment that ever flowing from the act . . . The whole of the medical evidence is on one side . . . and there is no part of it which leaves any doubt on the mind . . . If on balancing the evidence in your minds, you think the prisoner capable of distinguishing between right and wrong, then he was a responsible agent and liable to all the penalties the law imposes . . . If not so then you will probably not take upon yourselves to find the prisoner guilty. If that is your opinion then you will acquit the prisoner". The jury rendered a verdict of not guilty, on the ground of insanity.

The verdict created a great sensation and much controversy ensued. A few days after the trial the case was debated in the House of Lords. As a result the House of Lords put certain specific questions to the judges in the hope that the position might be clarified.

The answers to these questions are called the M'Naghten Rules to which we will later revert in detail.

For now it is enough to recall the general principle arising out of the M'Naghten case under which "it must be clearly proved that at the time of committing the act the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or if he did know it, that he did not know that what he was doing was wrong".

Medical and legal controversy continues with regard to the applicability of the M'Naghten Rules.

On July 1, 1893, the first codification of the criminal law was published in Canada and Section 11 was based on the M'Naghten Rules. But in the Canadian codification (1892) the words of the M'Naghten Rules were changed in three respects.

- (1) In subsection (1) the word "appreciate" was substituted in the first test for "know"
- (2) the word "and" was substituted for the word "or" between the two tests
- (3) in subsection (3) the word "clearly" was omitted before the word "proved".

If the wording of the new codified section were given its ordinary meaning the result would have been to broaden the first test, to make the task of the defence more difficult by requiring the defendant to qualify under both tests and to lessen the burden of proof on the defendant to a limited extent.

Provisions included in section 11 of the Canadian Criminal Code of 1892 were repeated by section 19 of the edition of 1927. The revision of the Canadian Criminal Code which came into force on April 1, 1955, made certain changes in the former section 19. But it does not seem that they were made to change the law.

¹ See Dr. R. E. Turner "Some thoughts on the M'Naghten Rules", Potsdam, New York, U.S.A. (R. A. 1151 T.875).

Of course the M'Naghten rules applied in the United States which inherited the common law. But the scope of the measure of irresponsibility differs according to the states and the jurisdictions.

Certain courts have made an attempt to promote clarification of the M'Naghten tests.

As early as 1871 the New Hampshire Supreme Court rejected the M'Naghten Rules as inadequate, stating that "the verdict should be "not guilty by reason of insanity" if the killing was the offspring of a product of mental disease in the defendant...".¹

Later the "irresistible impulse" test was recognized by the Ohio court² in addition to the M'Naghten Rules and it received a more definite form in subsequent decisions in other states³.

And in 1954 the United States Court of Appeals for the District of Columbia in *Durham v. U.S.*⁴ made an attempt to release the law from its outdated tests.

Durham had a long and varied record of imprisonments for thefts as well as commitments and treatments for mental illnesses, including discharge from the Navy because he was found to be suffering from a "profound personality disorder".

After attempted suicide, he had been transferred to the government hospital for the mentally ill. Discharged and later readmitted to the hospital, he was finally diagnosed as "without mental disorder". Upon discharge following the readmission, he was arrested and tried for housebreaking.

Durham waived trial by jury. The trial judge rejected his defence on insanity and Durham was convicted.

After reviewing the testimony of the psychiatric witness and of the defendant's mother, the Court of Appeals reversed the conviction, and enunciated the radical changes for the future which are the heart of the Durham decision; namely that the rule to be applied on the retrial of Durham and thereafter is simply, that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect⁵.

The Durham test was similar to that adopted in 1871 by the New Hampshire Supreme Court.

After having briefly recalled the main cases in their chronological order, let us now appreciate their effects on the law of insanity.

PART II

The defence on the ground of insanity involves different factors which are regarded differently by the M'Naghten Rules and by the Canadian Criminal Law though several similarities can be noted. The rules stated in the Durham case show greater differences. So we will examine the main rules and we will show how they differ.

¹ *State v. Jones* 50 N.H. 369, 398, 9 Am. Rep. 242, 264 (1871).

² *State v. Thompson, Wright's Ohio Rep.* 617 (1834) *Clark v. State* 12 Ohio Rep. 483 (1843).

³ *Blackburn v. State* 23 Ohio 146 (1872).

⁴ *Commonwealth v. Rogers* 68 Mass. 500 (1844).

⁵ *Commonwealth v. Mosler* 4 Pa 264 (1846), *State v. Felter* 25 Iowa 67 (1868).

⁶ *Durham v. U.S.A.* 214 F 2d 862, 874, 875 (D.C. Cir. 1954).

⁷ *Durham v. U.S.A.* 214 F. 2d 862, 870 (D.C. Cir. 1954).

M'NAGHTEN RULES

1. *The nature and the quality of his act*

Under the M'Naghten rules an accused person must be acquitted if, because of a disease of the mind "he did not know the nature and the quality of his act".

The phrase "nature and quality of his act" refers, as it has been held in England, to the physical nature and quality of the act and not to its moral or legal quality¹

"A kills B under an insane delusion that he is breaking a jar"

"the madman who cut a woman's throat under the idea that he was cutting a loaf of bread"².

Of course, a man who was under such a delusion as these, altogether apart from insanity, could never be convicted of murder, simply because he has no "mens rea" (manslaughter, however, might be another matter). The important practical difference is that, if the delusion arose from a disease of the mind, he would be liable to be indefinitely detained in a special hospital, whereas if it arose from some other cause, he would go entirely free.

What is a "disease of the mind" is, then, an important as well as a difficult question which has given rise to some decisions that are not easy to reconcile.

In 1955 it was decided that a physical disorder was not a "disease of the mind" and a man was not found insane because the trouble was caused by a cerebral tumour³.

Two years later Judge Devlin made an applicable distinction.

D. made an entirely motiveless attack on his wife with a hammer. He was charged with causing grievous bodily harm to her with intent to murder her. It appeared that he suffered from arteriosclerosis which caused a congestion of blood in his brain. As a result he suffered a temporary lapse of consciousness during which he made the attack. He suffered from a defect of reason that arose not from any mental disease but from a purely physical one.

Judge Devlin held that D. was suffering from a disease of the mind.

"The law is not concerned with the brain but with the mind, in the sense that 'mind' is ordinarily used, the mental faculties of reason, memory and understanding. If one reads for 'disease of the mind', 'disease of the brain', it would follow that in many cases pleas of insanity would not be established because it could not be proved that the brain had been affected in any way, either by degeneration of the cells or in any other way. In my judgment the condition of the brain is irrelevant and so is the question of whether the condition of the mind is curable or incurable, transitory or permanent"⁴.

2. *Knowledge that the act is wrong*

Then there is the question of whether "wrong" means "legal" or "moral" wrong. Did the accused know that what he was doing was contrary to law, or did he know that it was contrary to the moral law?

¹ Godere (1916) 12 Cr. App. Rep. 21.

² See J. C. Smith and Brian Hogan "Criminal Law"—Butterworths—London (1955) p. 103.

³ (1955) 1 All. E. R. at p. 362.

⁴ (1957) J Q B at p. 407; (1956) 3 All E. R. at p. 253.

The English Court of Criminal Appeal held in *R v. Windle*¹ that the word "wrong" means legally "wrong"

"Courts of law can only distinguish between that which is in accordance with the law and that which is contrary to law—The law cannot embark on the question and it would be an unfortunate thing if it were left to juries to consider whether some particular act was morally right or wrong. The test must be whether it is contrary to law—

In the opinion of the court there is no doubt that in the *M'Naghten Rules* 'wrong' means contrary to law and not 'wrong' according to the opinion of one man or of a number of people on the question whether a particular act might or might not be justified".

It is to be noted that the High Court of Australia has refused to follow this case and has held that "wrong" means "morally" wrong².

The right-and-wrong formula of the *M'Naghten Rules* has been the object of several criticisms because they are based upon an invalid theory which is far removed from modern psychiatric knowledge.

In 1953, Mr. Justice Franckfurter, in his testimony before representatives of the Royal Commission on Capital Punishment, criticized them in these words:

"To have rules which cannot rationally be justified except by a process of interpretation which distorts and often practically nullifies them, and to say the corrective process comes by having the Governor of a State charged with the responsibility of deciding when the consequences of the rule should not be enforced is not a desirable system—(the rules) are in large measure abandoned in practice, and therefore I think the *M'Naghten Rules* are in large measure shams. That is a strong word, but I think the *M'Naghten Rules* are very difficult for conscientious people and not difficult enough for people who say 'We'll just juggle them'³.

In his book "Law and Psychiatry", Sheldon Glueck wrote: "But apart from its illusory precision, and from the question long ago raised by that acute commentator on the English law, Sir James Stephen, about the questionable legal authoritativeness of the very influential advisory opinion of the English judges, there are weaknesses in it which have become ever more evident as with British and American trial and appellate courts have attempted to apply it. Among these the most devastating is the psychiatric: The various versions of the *M'Naghten* 'knowledge tests' unscientifically abstract out of the total personality, but one of its elements, the cognitive capacity, which in this age of dynamic psychiatry and recognition of the influence of unconscious motivation has been found to be not the most significant mental influence in conduct and its disorders. *M'Naghten* proceeds upon such questionable assumptions of an outworn era in mental medicine as that lack of knowledge of the 'nature or quality' of an act, incapacity to 'know right from wrong' is the exclusive or most important symptom of mental disorder; that such knowledge (even if one ignores the view of modern psychiatry of the role of unconscious motivation of acts) is the sole investigator and guide of conduct or, at least, the most important element in

¹ (1952) 36 Cr. App. R.85.

² *Stapleton v. The Queen* (1952) A.L.R. 929 86. C.L.R. 358.

³ See Sheldon Glueck "Law and Psychiatry". Cold War or Entente Cordiale? P. 46. The Johns Hopkins Press (Baltimore 1952) RA 1151 G.48.

conduct, so that only its absence should justly be the criterion of irresponsibility; and that capacity to assess the nature and quality of an act and its rightness or wrongness can be intact and can function as in the case of the average reasonable man, even though a defendant be otherwise demonstrably of disordered mind.

Not only is the famous test vague and uncertain, and not only does it embalm outworn medical notions, but even from the point of view of assumedly separate, insulated mental functions it is also too narrow a measure of irresponsibility. It does not take account of those disorders that manifest themselves largely in disturbances of the impulsive and affective aspects of mental life".¹

It is recognized by psychiatrists that a man may know the nature and quality of an act, may even know that it is wrong, and yet perform it under an impulse that is almost or quite uncontrollable.

In England law does not recognize the test of irresistible impulse, and the M'Naghten Rules remain unaltered². However irresistible impulse has been admitted into the law through the new defence of diminished responsibility.

CANADIAN SYSTEM

The Canadian law with respect to the defence of insanity is, as noted before, embodied in section 16 of the Criminal Code which provides:

- 16 (1) "No person shall be convicted of an offence in respect of an act or omission on his part while he was insane.
- (2) For the purposes of this section a person is insane when he is in a state of natural imbecility or has disease of the mind to an extent that renders him incapable of appreciating the nature and quality of an act or omission or of knowing that an act or omission is wrong.
- (3) A person who has specific delusions, but is in other respects sane, shall not be acquitted on the ground of insanity unless the delusions caused him to believe in the existence of a state of things that, if it existed, would have justified or excused his act or omission.
- (4) Every one shall, until the contrary is proved, be presumed to be and to have been sane (Emphasis added).

Under this section true knowledge of the nature and quality of the act requires an intellectual knowledge of the physical nature of the act.

The most important difference between the rule as it has developed in England since the M'Naghten Case and section 16(2) of the Canadian Criminal Code is in the substitution of the word "appreciate" (in section 16) for the word "know" (M'Naghten's Rules). In fact there is a wide difference of opinion among judges regarding the interpretation of the intellectual test, but the tendency is to rely on English authorities.

In *R. v. Harrop*³ the judge said—

"The learned judge dealt in his charge very fully and lucidly with the first part down to the word "and" before the words "of knowing" in

¹ See Sheldon Glueck "Law and Psychiatry" op. cit. pp. 47-48.

² The Criminal Procedure (Insanity) Act of 1964 c. 84 brought some improvements in the procedure but does not affect the tests themselves.

³ (1940) 74 c.c.c. 228 (Man.)

the said section, and his direction that the accused's appreciation of "the nature and quality of the act" meant in that case her appreciation of its physical consequences, was the proper one to give.

In *Clark v. R.*¹ Judge Duff of the Supreme Court of Canada concluded:

...although we have an express declaration by the legislature, the Code really adds nothing to the common law; in fact the presumption of sanity of mind, involving criminal responsibility, is recognized in England as well as in all countries, and our inquiries need not carry us further, which are subject to the common law".

In *R. v. Cardinal* the head note reads:

"The test of insanity as an excuse for a crime is whether the accused knew the nature and quality of the act he was committing. If he did not, insanity is established. If he did, the enquiry must be made whether he knew at the time that the act was wrong. "Wrong" here does not mean wrong in the moral sense, but wrong in the sense that it was contrary to law: *Reg. v. Holmes* (1953) 1 W.L.R. 686".

In *R. v. Holmes*² it was stated that—

...the test of insanity as an excuse for a criminal act. . .is whether or not the man knew the nature and quality of the act he was doing. If he did not, that establishes insanity. If he did, one must then go further and say: "Did he knew at the time that the act was wrong?". . ."Wrong", according to the decision of this court, does not mean wrong in the moral sense, but wrong in the sense that it was contrary to law.

However the Royal Commission on the Law of Insanity as a Defence in Criminal Cases in Canada was of the opinion that in Canada "wrong" means morally wrong"³.

AMERICAN SYSTEM

In the United States the courts have made various attempts to liberalize the range of criminal responsibility.

First the M'Naghten Rules have been accompanied by the irresistible impulse test. Later the New Hampshire or Durham test brought a radical change in the test, and finally the American Law Institute in its Model Penal Code recommended a new test which has been adopted in part by Vermont.

the irresistible impulse test

This test applies to a defendant who may know the nature and quality of his act and may be aware that it is wrong, but who, nevertheless, may be irresistibly driven to commit a crime by an overpowering impulse resulting from a mental condition. This case should not be confused with the case in which a man is temporarily blinded by anger, jealousy, or other overriding passions. In such case, the irresistible impulse test does not apply because the criminal act is not the result of a mental condition.

¹ (1921) 61 R.S.C. 608

² (1953-54) 10. W.W.R. (N.S.) 403 (C.A. Alta).

³ (1953) 1 W.L.R. 686 (1953) 2 All E.R. 324.

⁴ See G. A. Martin "Insanity as a Defence". *The Criminal Law Quarterly* Vol. 8, 1965-66, p. 240.

The test of irresistible impulse was adopted in different cases¹ and in 1929 the court of Appeals for the District of Columbia defined it as follows:

"The accused must be capable not only of distinguishing between right and wrong but he was not impelled to do the act by an irresistible impulse which means before it will justify a verdict of acquittal that his reasoning powers were so far dethroned by his diseased mental condition as to deprive him of the will-power to resist to insane impulse to perpetrate the deed, through knowing it to be wrong".

However, the irresistible impulse test has been rejected in England, Canada and in a greater part of the United States². But in fifteen states³ the federal jurisdiction and the military have coupled this test with the M'Naghten right/wrong test and thus liberalized their gauge of criminal responsibility.

The New Hampshire and Durham Test

This test does not rest on the right-and-wrong formula like the M'Naghten does.

In the New Hampshire case it was stated—

"Whether the defendant had a mental disease. . . seems as much a question of fact as whether he had a bodily disease; and whether the killing of his wife was the product of that disease was also as clearly a matter of fact as whether thirst and a quickened pulse are the product of a fever. That it is a difficult question does not change the matter at all. The difficulty is intrinsic; (and) symptoms, phases, or manifestations of the disease as legal tests of capacity to entertain a criminal intent. . . are all clearly matters of evidence, to be weighed by the jury upon the question whether the act was the off-spring of insanity; if it was, a criminal intent did not produce it; if it was not, a criminal intent did produce it, and it was a crime."⁴

In Durham the court pointed out the chief objections to the prevailing criteria of responsibility in these words:

"We find that as an exclusive criterion the right-wrong test is inadequate in that (a) it does not take sufficient account of psychic realities and scientific knowledge, and (b) it is based upon one symptom and so cannot validly be applied in all circumstances. We find that the "irresistible impulse" test is also inadequate in that it gives no recognition to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the inadequate right-wrong test. We conclude that a broader test should be adopted.

Invoking its authority to formulate tests of irresponsibility in the District of Columbia and its "inherent power to make the change prospectively" the Court then enunciated the radical change for the future which is the heart of the Durham decision; namely, that the rule to be applied on the retrial of Durham

¹ See page 675 of this study, footnote (3).

² See the Mentally Disabled and the Law. Report of the American Bar Foundation on the Rights of the Mentally Ill. The University of Chicago Press (1961).

³ The states are: Alabama, Arkansas, Colorado, Connecticut, Delaware, Indiana, Kentucky, Massachusetts, Michigan, New Mexico, Utah, Vermont, Virginia and Wyoming. Georgia has a delusional impulse test.

⁴ State v. Jones 50 N. H. 369, 398. 9 Am. Rep. 242, 264 (1871).

and thereafter is, "simply, that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect". As the court noted, and as the reader will have noted, this is essentially the New Hampshire doctrine.

The court then expounded certain critical aspects of the new rule: First, it defined the term "disease" in the "sense of a condition which is considered capable of either improving or deteriorating", and the term "defect" in the sense of a condition which is not capable of either improving or deteriorating, and which may be either congenital, or the result of injury, or the residual effect of a "physical or mental disease"¹

In *Stewart v. U. S.*² two weeks after the *Durham* case was decided the United States Court of Appeals for the District of Columbia reversed and remanded a conviction for retrial under the *Durham* test on the ground "that it is error to charge the jury in a way from which they could infer that a mental disease is always physiological in nature, and error, also, to charge that a psychopath is a person of low intelligence and is never "insane" within the view of the law. The court reasoned that the trial judge had invaded the functions of expert witnesses and jury by treating factual issues either as having been settled by the testimony or as being matters of law. Questions of the nature of mental disease, it argued, are for the jury to assess in determining whether the standards of exoneration have been met. It is a matter of fact, not of law, whether a psychopathic personality meets the test."

On the other hand, in *Smith v. United States*³, the court (Bazelon, J. dissenting) held that testimony that accused had, prior to an attack on his wife with a dangerous weapon, become increasingly indolent, that he had a violent temper and that he made the unprovoked and unusually violent assault because of a supposedly "concocted grievance", was held to be not sufficient evidence to present the insanity issue for consideration of the jury.

Regarding the question of proof, the District of Columbia Court pointed out that, according to precedent in federal cases, whenever "some evidence" exists that the accused suffered from a diseased or defective condition" at the time of the prohibited act, "the trial court must provide the jury with guides for determining whether the accused can be held criminally responsible". In respect to such guidelines, the court said that the instruction should "in some way convey to the jury the sense and substance of the following":—

"If you...believe beyond a reasonable doubt that the accused was not suffering from a diseased or defective mental condition at the time he committed the criminal act charged, you may find him guilty. If you believe he was suffering from a diseased or defective mental condition when he committed the act, but believe beyond a reasonable doubt that the act was not the product of such mental abnormality, you may find him guilty. Unless you believe beyond a reasonable doubt either that he was not suffering from a diseased or defective mental condition, or, that the act was not the product of such abnormality, you must find the accused not guilty by reason of insanity⁴.

¹ Extract from "Law and Psychiatry" op. cit. p. 87.

² 214 F.2d. 879 (P.C. cir. 1954).

³ 272 F.2d 547 (D.C. Cir. 1959).

⁴ Sheldon Glueck op. cit. p. 90.

Considering the possibility of the jury concluding that a condition of mental abnormality is by itself sufficient to relieve the accused from responsibility, the court added the following caveat to its illustrative generalized charge:

... your task would not be completed upon finding, if you did find, that the accused suffered from a mental disease or defect. He would still be responsible for his unlawful act if there was no causal connection between such mental abnormality and the act.¹

It should be mentioned that after reversal of the conviction, and upon a new trial, Durham was again convicted of housebreaking and petty larceny and sentenced to a term of one to four years. Because the trial judge's instruction to the jury that the accused would remain in the hospital until determined to be "of sound mind" was followed by the prejudicial statement that "if the authorities adhered to their last opinion on this point, he will be released very shortly", the second conviction of Durham was also reversed.

It is obvious that the Durham case was an attempt to liberalize the test of criminal responsibility. It widens the scope of the relationship of various mental illnesses to irresponsibility.

Secondly, the broadening of the area of mental illnesses related to non-responsible behavior permits correlatively a much wider and deeper scope of psychiatric testimony. The relationship of mental disease to lack of responsibility has been widened and in this connection the Durham formula makes possible a continuous adjustment, with the progress of psychiatry.

Thirdly, the court points out that the division of labor implied in the Durham decision permits the jury "to perform its traditional function, to apply 'our inherited ideas of moral responsibility to individuals prosecuted for crime' . . . Juries will continue to make moral judgments, still operating under the fundamental principle that 'Our collective conscience does not allow punishment where it cannot impose blame' ".²

Psychiatrists for the most part applauded the Durham decision while the legal profession accepted it with some scepticism.

However the Durham decision has not been widely adopted outside of the District of Columbia. It has been rejected by numerous scholars, by at least four United States Circuit Courts of Appeals, by the United States Court of Military Appeals, and by the Supreme Courts of some nineteen states.

But the State of Maine has adopted the Durham rule by statute³. It has also been statutorily adopted in the Virgin Islands⁴.

Sheldon Glueck who makes a thorough examination of the Durham case in his book "Law and Psychiatry"⁵ gives the main reasons why this case has not been generally followed.

It is true that the Durham formulation leaves the jury without some specific guides⁶. Exculpation from criminal responsibility requires that the criminal act be "the product" of a mental disease" or "mental defect".

¹ Sheldon Glueck *op. cit.* p. 90.

² Extract from *Law and Psychiatry*, *op. cit.* p. 93.

³ An act relating to Criminal Acts. Due to Mental Disease (May 1961).

⁴ V.I. Code Ann Tit. 14-1-14 (1957).

⁵ Extract from *Law and Psychiatry*, *op. cit.*

⁶ *Commonwealth v. Chester*. 337 Mass. 702, 713, 150 N.E. 2d 914 920 (1958).

But the terms are vague and the Durham case does not provide the jury with the proper guidance to answer these questions¹.

Sheldon Glueck notices however that the situation was not different when the M'Naghten case was decided. And he points out that "the important words of the knowledge tests were not clearly defined even when laid down by the judges of England in 1843"².

One of the most frequent criticisms of Durham is that it relies too greatly on the undefined "product test"³ and that the product requirement seems to have no real meaning⁴.

In the Carter case⁵ the court explained that the "product test" does not require the act to be a direct or immediate result of mental disease. Rather it says the relationship between disease and act must be "critical" or "determinative" so that "the accused would not have committed that act if he had not been diseased as he was. . ."

The word "product" carries with it the idea of causality and one of the main criticisms is that Durham fails to provide necessary intervening links between mental aberration and irresponsibility. Durham jumps directly from the finding of mental disease to the conclusion of lack of responsibility without specifying that the jury should go through the intermediate stage of assessing the effect of the mental illness on the processes of rational conduct.

Consequently the mere proof of mental disease is virtually sufficient to establish criminal irresponsibility⁶.

On the other hand, since not only mental disability but cause-and-effect relationship between the disorder and the crime are specifically involved in the terms of the "product" rule, the prosecutor must also prove beyond a reasonable doubt that even if the accused was mentally disordered his criminal act was not the product of the disease or defect. To establish responsibility the prosecutor is required in effect to convince the jury that the defendant would have committed the crime even if he had not had a mental disease or defect.

In 1959 a Connecticut case⁷ rejected Durham on the ground, among others, that it will make the psychiatrist's judgement virtually conclusive. Of course the jury can disagree with psychiatrists but Durham's case gives psychiatric opinion great weight and makes it in great measure the arbiter.

However the Durham rule has been amplified by subsequent decisions of the United States Court of Appeals for the District of Columbia Circuit⁸. The Bar

¹ Sellars v. State 73 Nev. 248, 316 p. 2d. 917 (1957). State v. Gonza 317 S.W. 2d 609 (Mo. 1958) State v. Andrews, 187, Kan. 460, 357 P. 2d. 739 (1960) Kwosek v. State, 8 Wis. 2d 647 100.

² N. W. 2d 339 (1960) U.S. v. Currens, 290 F. 2d. 751, 773-774 (3d Cir. 1961) op. cit. p. 97.

³ State v. Goyet, 120 Vt. 12, 132 A. 2d. 623 (1957); People v. Carpenter, 11 Ill. 2d, 60, 142 N. E. 11 (1957); Sauer v. U.S. 241 F. 2d, 640 (9th Cir. 1957) 354 U.S. 940 (1947).

⁴ Flowers v. State, 236 Ind. 151, 139 N.E. 2d 185 (1956) State v. Lucas 30 NJ 37, 152 A. 2d 50 (1959).

⁵ Carter v. U.S. 252, F. 2d 608 (D.C. Cir. 1957) See also Stewart v. U.S. 247 F. 2d. 42 (D.C. Cir. 1957).

⁶ State v. Lucas 30 N.J. 37, 71, 152, A 2d, 50 68 (1959).

⁷ State v. Davies, 146 Conn. 137, 148, A. 2d. 251 (1959).

⁸ Lyles v. U.S. 254, F. 2d. 725 (D.C. Cir. 1958); Carter v. U.S. 252 F. 2d 608 (D.C. Cir. 1957); Elding v. U.S. 251 F. 2d, 878 (D.C. Cir. 1957); Wright v. U.S. 250 F. 2d 4 (D.C. Cir. 1957); and Williams v. U.S. 250 F. 2d. 19 (D.C. Cir. 1957).

Association of the District of Columbia's Committee on Criminal Responsibility has stated the rule as of August 1959, to be as follows:—

"The accused is not responsible for a criminal act if such act was the product of a mental disease or mental defect. A mental disease is a diseased mental condition which may get better or get worse; a mental defect is a diseased mental condition which cannot get better and cannot get worse. The criminal act was the product of the mental disease or mental defect if the act would not have occurred except for the disease or defect; and that is so whether the disease or defect was the only cause of The cat, or the principal one of several causes, or one of several causes".

Four years after the Durham decision the author of the opinion, Judge David L. Bazelon, made the following remarks:

... The thesis of Durham is not complicated and it is not revolutionary. It is simply that juries should be told what is known about the dynamics of human behavior.

.....

The psychiatrist in the courtroom must understand that his function is not to make a legal determination of whether an accused is suffering from a mental disease or defect. That is for the judge and jury to decide. The psychiatrist's role is to supply the medical data—observed facts or opinions or both—upon which a legal determination can be based...

In spite of commentaries of all kinds made upon the Durham case, Sheldon Glueck does not hesitate to conclude that the "criticisms are not sufficiently persuasive to counteract its valuable potentialities". In fact it is a formula which deserves to be supplemented by the creative role of the judges.

The Vermont test

Recently Vermont abolished the use of the M'Naghten Rules and substituted for them a formulation very similar to that recommended by the American Law Institute's Model Penal Code.

As enacted in Vermont this test provides that:

- (1) "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks adequate capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
- (2) The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. The terms "mental disease or defect" shall include congenital and traumatic mental conditions as well as disease.

The Vermont test differs from that suggested by the Model Penal Code in only two respects: (1) It substitutes the word "adequate" for the word "substantial" in the phrase "substantial capacity"; and (2) it adds a sentence which elaborates on the meaning of "mental disease or defect". In summary, it may be said that the Code and the Vermont formulations contemplate a further broadening of the M'Naghten-irresistible impulse combination in an effort to reflect

¹ Extract from "The Mentally Disabled and the Law". Report of the American Bar Foundation on the Rights of the Mentally Ill. The University of Chicago Press (1961).

some of the shades in the spectrum between complete mental collapse and complete understanding. At the same time, these formulations attempt to state a reasonably workable standard of criminal irresponsibility.

At least eleven states have incorporated some definition of criminal responsibility in their statutes. Not all of these statutory definitions specifically embody any particular test. Several speak in very general terms of "insanity" or "mental responsibility". For instance, the statutes of two states affix criminal liability only on a person "of sound mind who is neither an idiot, a lunatic, nor afflicted with insanity". . . . Wisconsin has likewise not made an attempt to codify any test but has rather allowed the courts to fill in the content of the phrase "a reasonable doubt of sanity or mental responsibility at the time of commission of the act".

On the other hand, legislatures in six states have adopted some variation of the M'Naghten rules in the statutes they have enacted. Colorado has supplemented the M'Naghten rules with the "irresistible impulse" test in its statutory definition of criminal responsibility. Of those few states which do not subscribe to some variety of the M'Naghten or irresistible impulse tests, Vermont alone has achieved this break with the prevailing standard through an act of the legislature.

The Model Penal Code test was considered and rejected in 1959 by the New Jersey Supreme Court⁽¹⁾ and by the Special Commission on Insanity of the Massachusetts Legislature. In 1957 it received like treatment from the majority of the Canadian Royal Commission which stated:

"We think the main proposal . . . (referring to the Model Penal Code 4.01) has many features of our law as presently interpreted and applied, but has the defect of having no jurisprudence to support it and would be much more difficult to present to a jury".

CONCLUSION

The criminal law at large is under transformation. Several concepts are being reviewed and remain under revaluation.

In this general field the law of insanity deserves particular attention because the solution of the problems it raises needs not only the skill of the lawyers but also of the psychiatrists. Unfortunately they do not always share the same philosophy and this makes difficult the finding of an ideal solution.

However, in the words of Glueck:

"With the steady improvement of psychiatric research and insight, we may expect psychiatric testimony to be more cautious and illuminative. With the steady expansion of legal learning influenced by relevant paralegal disciplines, we may expect a less mechanical jurisprudence to be reflected in judicial decisions. As is to be anticipated, there are individuals in both camps who tend to carry a professional chip on the shoulder. But on the whole I think it can be said with a fair amount of accuracy that

⁽¹⁾ State v. Lucas 30 N. Y. 37, 72, 152 A. 2d. 50-68-69 (1959).

there has been a considerable thaw in the cold war and that the practitioners of the ancient arts of medicine and law are at long last approaching a sympathetic and realistic understanding. And this, I think, gives promise of ripening in the not too distant future into an "entente cordiale".⁽¹⁾

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APPENDIX 13

MENTAL ABNORMALITY AND THE CRIMINAL LAW

THE PRESENT SITUATION

(By Professor Stuart Ryan, Faculty of Law, Queen's University.)

1. General Survey

(1) (a) See generally:

(i) Barry Swadron, *Detention of the Mentally Disordered* (1964) Chs. 8-12

(ii) G. A. Martin. "Insanity as a Defence," J. Ll. J. Edwards "Automatism and Social Defence," and H. H. Bull, "Fitness to Stand Trial," (1966) 8 *Criminal Law Quarterly* 240-289.

(iii) *Report of Royal Commission on the Law of Insanity as a Defence in Criminal Cases* (Can. 1956).

(b) The "McNaghten Rules" do not express the law of Canada where their language differs from that of s. 16. It would be best not to refer to those rules in our courts. See *Report of Royal Commission*, above cited, at p. 8. English cases and those from the Common Law jurisdictions must for this reason be used with great caution.

(2) Mental abnormality affects criminal law and the penal processes in the following ways:

(a) A person who is "insane" as defined in s. 16 is not criminally responsible for his conduct while he is in that condition.

(b) A person who is "insane" within the meaning of s. 524, (where no statutory definition appears,) is not "fit to stand trial" on a charge of a criminal offence, and cannot be tried while he is in that condition, whether or not he would be found criminally responsible if he were tried.

(c) A person who is not "insane" but is "mentally abnormal" may for that reason be incapable of forming the intent which is a necessary element of a particular offence. *More v. R.* [1963] S.C.R. 522, 41 C.R. 98, [1963] 1 C.C.C. 289. See G.A. Martin, above cited, at p. 254, and "Necessity of Proof of Wrongful Intent in Criminal Cases," (1961) 4 *Crim. L.Q.* 63 at 67. See *R. v. Lenchitsky* [1954] *Crim. L.R.* 216. Whether this principle would apply to mental states other than intention is uncertain. "Mental abnormality" of certain kinds would be clearly relevant to offences involving recklessness or "advertent negligence" and should also be taken into account, in offences involving simple or "inadvertent" negligence, where the personal element is used as one of the basic facts on the issue of foreseeability.

(d) "Mental abnormality" of any kind or degree may lead to loss of self-control by a person who is provoked into culpable homicide and will be relevant on the question whether the offence is murder or manslaughter, assuming that the provocation is of such a nature as to be sufficient to deprive an ordinary person of the power of self-control. S. 203.

(e) A woman who by a wilful act or omission kills her newly-born child while "the balance of her mind is disturbed" as a result of giving birth or lactation is guilty not of murder or manslaughter but of infanticide. S. 204

(f) Mental abnormality of any kind is relevant to sentence when the court exercises discretion in awarding punishment under s. 621.

A mentally abnormal person may be placed on suspended sentence or probation under s. 638 on condition that he undergoes out-patient psychotherapy.

In most cases, death sentences imposed on mentally ill or mentally defective persons have been commuted to life imprisonment. A mentally abnormal person undergoing imprisonment receives psychiatric treatment in the penal institution to the extent that psychiatric services are available. At present, such services are inadequate, owing to shortage of psychiatrists. If his condition is severe, he may at least in some provinces, be treated while under sentence in a provincial mental hospital. It would appear that therapy in such institutions offers more hope of success than therapy in prisons. Plans for construction of medical-psychiatric units in the national penitentiary service have been announced.

See *Code s. 527*, as well as the *Penitentiary Act*, (1960-1, Can. C. 53) s. 19, and legislation of the several provinces respecting mental hospitals.

See Swadron, above cited, Ch. 12.

A person convicted of an offence mentioned in s. 661 if he is proved in a hearing conducted under s. 662-3 to be a "dangerous sexual offender" as defined in s. 659(b), must be sentenced to preventive detention which means life imprisonment subject to special provision for parole. Such persons are kept in ordinary penitentiaries, where some are segregated in psychiatric wards and others in dissociation cells, and others are kept in the general population. Some of them receive psychiatric therapy; others do not. Not all are mentally abnormal.

When s. 17 of the *Narcotic Control Act* 1961, (1960-1 Can. c. 35) is brought into force, a narcotic addict convicted of an offence under s. 3, 4 or 5 of that Act will be sentenced to an indeterminate period of treatment in custody which may be life-long, subject to special provision for parole. Addicts sentenced to penitentiary terms in western Canada are, it is understood, confined in Matsqui Institution and are subjected to a regime designed as therapeutic. Similar treatment is afforded in some provincial institutions and in the Prison for Women. At present, other addicts are not given any particular treatment for their addictions.

(g) For responsibility for automatic conduct related to mental abnormality, see J. Ll. J. Edwards, above cited, at pp. 269-289, and L. H. Leigh, *Automatism and Insanity*, (1962) 5 *Criminal Law Quarterly* 160. See also note 3(2), below.

(h) The criminal law also contains provisions designed to protect mentally abnormal persons, such as ss. 140, 186(1) (c) and 194(5)(d).

(3) Provisions of the Code governing procedure in cases involving mentally abnormal persons are as follows:

(a) Remand in custody for observation before or during preliminary hearing (s. 451(c)), or trial of indictable offence (s. 524(1a)), or trial of summary offence (s. 710(5)), if on the evidence of at least one medical practitioner there is reason to believe that the accused is mentally ill.

Provincial legislation in Ontario R.S.O. 1960, c. 172, s. 38) and Saskatchewan (1961 Sask C. 68 s. 17) authorized similar remands without the requirement

of hearing medical evidence. Under the Ontario statute, the remand may be for 60 days. Under the Saskatchewan Act the remand may be either in or out of custody.

The power given to the Lieutenant-Governor by s. 527 to transfer a person who on evidence satisfactory to him is insane, mentally ill, mentally deficient or feeble-minded from a "prison" to a "place of safekeeping," to be detained until the Lieutenant-Governor is satisfied that he is recovered is, in practice in some if not all provinces, interpreted to authorize such transfer before or during trial as well as after conviction. A "feeble-minded" person is defined in s. 2(17), as somebody who from birth or early age is so mentally deficient that he requires care, supervision and control but is above an "imbecile".

In *Fawcett v. A. G. Ont.* [1964] S.C.R. 625, 44 C.R. 401, [1964] 1 C.C.C. 164, the S.C.C. held that a person remanded under s. 524(1a) (and, by inference, under s. 451(c) or s. 710(5)) could be certified as mentally ill under provincial legislation and detained in a provincial mental hospital after the period of remand. No statutory provision determines whether a person so detained is to be tried after his release from the mental hospital for the offence originally charged against him. Since the certification does not determine whether he is "fit to stand trial" or whether he is "sane" or "insane", and he may have been at all times both "sane" and "fit to stand trial," it is desirable that some provision be made for disposal of the pending charge. In practice, a discretionary decision is made by the Attorney-General or his agent whether to proceed with it or not. If it is not proceeded with it should be dismissed; otherwise it remains suspended like the sword of Damocles over the head of the accused during his whole life. It is understood that dismissal does not always occur.

In most cases, the accused so remanded is returned to the court with a psychiatrist's report. Some psychiatrists are uncertain how to report on his condition, particularly if he does not appear to be "insane" under s. 16 or "unfit to stand trial". A complete report will be of assistance to the court in sentencing if the accused is convicted, but there is some reluctance to submit a "pre-sentence" report on a man who has not been convicted. Nevertheless, such reports have proved valuable, even at the pre-trial stage, in a large number of cases.

See generally, Swadron, above cited Ch. 8.

(b) "Fitness to stand trial" is determined under s. 524. Under S. 525, the same procedure is to be followed if the accused is brought before the court to be discharged for want of prosecution.

In each case, under ss. 524 and 526, the accused is to be kept in custody during the pleasure of the Lieutenant-Governor. Under this procedure, either the accused is not tried or his trial is not completed. He may therefore be tried later on if he is then fit to stand trial. There seems therefore to be an element of oppression in s. 525, since the accused would otherwise be entitled to an acquittal and could be dealt with under provincial mental health legislation if his detention were necessary, whereas release of persons detained under s. 526 or s. 527 is not easily obtained, if at all, and the decisions are made partly at least on political grounds.

See generally, Swadron, above cited, Ch. 9.

(c) The issue of "insanity", within the meaning of s. 16, as affecting criminal responsibility, is raised by a plea of "not guilty". See s. 515. It is common and

usually prudent practice, although not strictly compulsory, for counsel who intends to rely on "insanity" as a defence to inform the court of his intention at the time of pleading. Under a plea of "not guilty", it may be argued on behalf of the accused that he didn't do the act, but if he did he was insane when he did it. These two "defences" don't go well together, and are rarely used at the same time.

Under s. 523, a court or jury acquitting on the ground of insanity is required to make a finding and declaration to that effect. The common form of verdict in that case is "not guilty by reason of insanity".

Under s. 523(2) and 526, a person acquitted by reason of insanity is kept in custody during the pleasure of the Lieutenant-Governor.

(d) persons detained under s. 526 or s. 527 are normally kept in provincial mental hospitals, but there is no legal requirement to this effect.

(e) For use of previous testimony of a witness who has become insane, see s. 519(1) (b).

2. Meaning of "Insanity" and other Terms

(1) "Insanity" is a word long ago discarded as obsolete and irrelevant in medical science, by retaining which legislators, judges and lawyers cause much confusion.

The confusion is increased because in criminal law the term has two different meanings.

(a) Under s. 16, with reference to criminal responsibility, it is related to capacity to appreciate the nature and quality of an act or omission or to know that an act or omission is wrong. See G.A. Martin, above cited.

(b) Under s. 524, with reference to fitness to stand trial, it is related to capacity to understand the nature of the offence charged and of the criminal process and its consequences and to "instruct counsel," that is to say, to give a reasonably rational account of the facts within his knowledge and belief and to understand counsel's advice, and to plead and act in a reasonably rational manner during the trial. See H.H. Bull, above cited.

Further, the critical time for the issue of criminal responsibility is the time of the conduct alleged to have constituted the offence, while the critical time for the issue of fitness to stand trial is the time of the trial. (See *Sodeman v. R.* (1936) 55 C.L.R. 192 (Aus. H.C.)).

A person who is fit to stand trial may be free from criminal responsibility on the ground of insanity. The reverse may also be true, but the question of criminal responsibility can never be determined unless the accused is fit to stand trial at some time when the state and the court are both ready to try him. A person who is at one time unfit to stand trial may later be fit and may then be tried and may be found to have been either "sane" or "insane", within the meaning of s. 16, at the time of the conduct in question.

(2)(a) "Insanity" under s. 16 may result from "natural imbecility" or "disease of the mind".

The term "natural imbecility" is no longer used in medicine, having been replaced by "mental defect," "mental deficiency" or "intellectual deficiency", but

it is a carry-over from a time when mentally deficient persons were described as morons, imbeciles and idiots, in decreasing order of intelligence.

The phrase "disease of the mind" corresponds roughly with the medical terms "mental disease" or "mental illness", but medical classification and terminology are not uniform. Medical concepts of mental abnormality, otherwise than in relation to mental defect, do not in any event correspond with either legal definition of "Insanity".

(b) The broad band of mental abnormality which is the special concern of the psychiatrist and the psychologist includes conditions some of which are and others of which are not described as "mental diseases" or "mental illnesses". There is, indeed, one school of psychiatrists who deny the existence of "mental disease," as such. They substitute "an altered internal status of the individual vis-à-vis his external world as interpreted by others", or similar expressions. Although orthodox medical doctrine does not fully accept their conclusions, their arguments are of value in emphasizing the fact that many mental disorders are not clearly distinguishable from each other and individual patients may suffer from conditions exhibiting features of more than one of the accepted classifications.

(3) The following greatly simplified classification of mental abnormality appears to be generally accepted in medical science.

(a) States of "mental defect" or "intellectual deficiency", almost infinitely graded.

(b) "Psychotic states" or "psychoses", in which the patient has an acquired state of mental abnormality by which the personality is markedly altered so that he loses his normal appreciation of reality and may become deluded and may suffer hallucinations, and he therefore feels, thinks and behaves in ways not normal to him.

(i) Some psychoses are organic in origin, being caused by some poison, including alcohol and certain drugs, or some chemical derangement of the brain, or a physical derangement or partial destruction of the brain, through injury, brain tumour, meningitis, encephalitis, syphilis, arteriosclerosis, Huntington's chorea, or some other disease, or by senility.

(ii) Other psychoses are "functional" where no evidence of physical disturbance or damage to the brain is found. This group includes manic-depressive and melancholic states, various kinds of schizophrenia, and other disorders.

(c) Epilepsy is a complex group of conditions in which there are sudden, or relatively sudden, recurrent and transient derangements of brain function and either complete unconsciousness or a "cloudy mental state," followed by complete or partial amnesia covering varying periods. Seizures may be violent and marked by gross symptoms or brief interruptions of consciousness recognized only by a blank stare and interruption of speech. In a form known as "psychomotor" or "temporal lobe" epilepsy, the patient is neither normally conscious nor unconscious and may automatically engage in ostensibly purposeful conduct which may include motiveless acts of great violence and apparent cruelty. Epilepsy may be but is not usually accompanied by other mental abnormality; the patient may have any degree of intelligence; he may be a genius, as was Julius Caesar.

(d) Neuroses are conditions in which the patient is disturbed by psychological or physical symptoms which represent a psychological reaction to his problems and difficulties. Emotional in origin and affecting conduct, these disturbances do not prevent normal appreciation of reality and social behaviour, and do not cause delusions or hallucinations. Neuroses include anxiety states, hysteria with or without fugue or amnesia, excessive fatigue, irritability, physical complaints and obsessive-compulsive conditions, such as excessive concern for cleanliness, ritualistic activity, occasionally kleptomania and rarely pyromania, although some kleptomaniacs and pyromaniacs suffer from other mental disorders.

(e) Abnormal personalities, including:

(i) The psychopathic or sociopathic personality, variously defined but usually marked by consistent failure to display evidence of a normal conscience, inability to feel guilt or remorse or sympathy for others, habitual anti-social activity with usually little or no evidence of prudence or long-term foresight of consequences, apparent inability to learn from experience or profit from instruction or punishment, and absence of any other form of mental disorder. This condition is highly resistant to treatment in most cases. (The term "sexual psychopath" should be avoided since it indicates and suggests confusion and misunderstanding of several concepts, not related to the psychopathic or sociopathic personality. It is no longer used in Canadian criminal law, but is used in some jurisdictions in the United States.)

(ii) Alcoholics who may but need not suffer from another mental disorder.

(iii) Drug addicts who may but need not suffer from another mental disorder. Drugs of addiction include opium and its derivatives, chiefly morphine and heroin, cocaine and related drugs, hemp derivatives including marijuana, and other hallucinogens (although physiological addiction to some of these drugs has not yet been demonstrated), barbiturates, amphetamines and tranquilizers.

(iv) Included in this group are some "dangerous sexual offenders" defined in s. 659(b), but this is a statutory not a medical definition. Not all "dangerous sexual offenders" so defined are deviates; some of them are not in fact dangerous.

(v) A woman suffering from the effects of childbirth or lactation may experience mental disturbance which may cause her to kill her child. This condition may be accompanied or followed by some other mental disorder.

4) "*Natural imbecility*" or "*disease of the mind*"

Little difficulty is experienced in accommodating medical terminology to fit the term "natural imbecility." The question for the purpose of s. 16 is one of degree.

In a sense, the phrase "disease of the mind" is irrelevant to medical science, except insofar as conformity to criminal and other legislation is required. All mental abnormalities call for treatment, although some do not respond to any treatment so far devised. Except for the distinction between mental normali-

ties of organic origin and those of functional origin, it is impossible to find clearly defined boundaries marking off one kind of disorder from another. The accepted classification of functional disorders is otherwise based more on symptoms than on causes. One patient may display symptoms suggesting more than one category. The distinction between neuroses and psychoses may in certain cases be only a matter of degree and there may be differences of professional opinion over the correct category.

However, except for those mentioned in paragraph (2) (b) above, psychiatrists generally agree that functional psychoses are "diseases of the mind." Some describe organic psychoses as "diseases of the brain" rather than of the "mind", because of their physical or physiological aspects, but others regard these also as "diseases of the mind." Epilepsy creates more difficulty in classification, because many epileptics are not mentally abnormal except while undergoing epileptic attacks, and some of them can keep their symptoms fairly well under control by diet and drugs while some others can obtain relief through surgery. Some psychiatrists therefore describe epilepsy as a "disease of the brain", but others classify it as a "disease of the mind". As noted in paragraph 3(2), below, the courts may tend to regard it as a "disease of the mind" along with all kinds of psychoses.

Some psychiatrists in the United States regard "psychopathy" or "sociopathy" as a "disease of the mind", but others do not. In Canada, there is not universal acceptance of the existence of the category; where it is recognized it is generally classified not as a "disease" but as a "personality state". The psychopath or sociopath is not within the definition in s. 16(2), unless some other disorder renders him "insane".

"Neuroses" and other "personality states" are not generally regarded as "diseases of the mind", at least within the meaning of s. 16, although they create conditions calling for treatment.

Although for some purposes analysis of mental functions as intellectual, emotional and conative (related to the will) is still employed, medical science now rejects the concept of a mental disorder which affects only one or two of these functions. The workings of the mind are so interrelated that when a person suffers from a mental disorder it affects all these functions in him. A person who suffers from specific delusions, as in s. 16(3), cannot be medically regarded as "in other respects sane"; this fact is of little significance since subs. (3) adds little if anything to subs. (2).

3. "Insanity" under s. 16.

(1) Criminal law is not at present concerned directly with these medical categories in relation to criminal responsibility except insofar as they describe what may be called "natural imbecility" or "disease of the mind", in relation to the question on whether the accused was at the critical time capable of appreciating the nature and quality of his conduct or of knowing that it was wrong. *R. v. Brockenshire et al.*, [1931] O.R. 806, 56 C.C.C. 340, [1932] 1 D.L.R. 156.

The ostensible concern of the law with problems of understanding and apparent refusal to take into account disorders of the emotions and the will make it difficult for some psychiatrists to deal effectively with the problem of "insanity" in relation to criminal responsibility. Others accept legal terminology and interpret their science in legal categories, asserting in substance that the major

organic and functional psychoses affect the intellect and can deprive the patient of the capacity for understanding which is necessary for criminal responsibility.

(2) No distinction appears to have been made by the courts or by expert witnesses between organic and functional conditions as being or not being diseases of the mind" for the purpose of s. 16 until unconscious automatism was recognized as negating voluntary conduct.

In *R. v. Charlson* [1955] 1 W.L.R. 317 [1955] 1 All E.R. 859 39 Cr. App. 37, evidence that accused might be suffering from a brain tumour was accepted for the first time as tending to prove, not a disease of the mind but a physical or organic disease, and as supporting an inference, not of "insanity" but of "non-insane automatism".

In *R. v. Schonberger* (1960) 31 W.W.R. 97, 33 C.R. 107, 126 C.C.C. 113, evidence indicating possible organically caused automatism which could be induced by alcohol was accepted for the same purpose.

However, in *R. v. Kemp* [1957] 1 Q.B. 399, [1956] 3 W.L.R. 724, [1956] 3 All E.R. 249, 40 Cr. App. R. 121, (arterio-sclerosis), *R. v. Cottle* [1958] N.Z.L.R. 999, (psychomotor epilepsy), *Bratty v. A.G.N.I.* [1963] A.C. 386, [1961] 3 All E.R. 23, [1961] 3, W.L.R. 965, 46 Cr. App. R. 1, (psychomotor epilepsy), and *R. v. Brien* (N.B.C.A.) [1966] 3 C.C.C. 288, (psychomotor epilepsy) courts in England, New Zealand, and the House of Lords for Northern Ireland, and now Canada, have required evidence of organically based automatic conduct to be related to "insanity" and not to "non-insane automatism."

In *R. v. Ditto* (1962) 38 W.W.R. 480, 38 C.R. 32, 132 C.C.C. 198, it was held that a person suffering from psychomotor epilepsy could be unfit to stand trial by reason of insanity while undergoing an epileptic attack and fit to stand trial after covering.

Under the rule in *Bratty v. A.G.N.I.* in this situation, if the jury do not find the accused "insane", a verdict of acquittal on the ground of automatism is possible only if there is evidence of some cause other than the organic condition (perhaps a blow on the head) which could have caused automatism.

This rule and other possible solutions are discussed by J.L.I.J. Edwards, *supra* cited, at pp. 285-9. He recommends some "social defensive measure" because of the danger of recurrent automatism causing future harm.

While this concern is justified, the rule in *Bratty's* case will often be unjust and oppressive to the accused whose automatism is caused by epilepsy or another organic condition. He may be convicted because the jury fails to give adequate weight to expert evidence, having regard to the burden of proof of insanity resting on him. If he is acquitted by reason of insanity he will be detained during the pleasure of the Lieutenant-Governor, perhaps for life, in an institution whose authorities cannot release him except under authority of a political decision which may never be made. Yet, with proper diet and drugs or, in some cases, after surgery he may be perfectly safe at large.

Fortunately, there has been no tendency to extend the rule in *Bratty's* case to persons suffering from diabetes. Their cases have been dealt with under automatism.

See also note 3(4) below, "Insanity and Intoxication."

Some better solution of the problem of the epileptic and other persons in this class must be found. The English and Scottish defence of "diminished

responsibility" applies only to homicide cases, and results as a rule in a term of imprisonment which is inappropriate in many cases.

(3) *Capacity to appreciate the nature and quality of conduct*

The proposition that persons suffering from the major organic or functional psychoses lack capacity to appreciate the nature and quality of their conduct appears to be correct if the language of s. 16(2) is understood, as it should be, as referring to capacity to foresee and measure the nature and consequences of conduct or to estimate aright the full force of an act or omission, or to know it to be wrong, not merely legally wrong but wrong in the sense that it is something one ought not to do and for which one would be condemned in the eyes of his fellow men.

See *Report of Royal Commission*, above cited, at p. 13, and G. A. Martin above cited, at pp. 243-4.

As Mr. Martin says, at pp. 245-6, there is evidence that the courts are beginning to accept such a presentation.

See *R. v. O.* (1959) 3 Crim. L.Q. 151, where McRuer C.J.H.C. instructed the jury in accordance with the above mentioned standard.

In *R. v. Laycock* (1952) O.R. 908, 15 C.R. 292, 104 C.C.C. 274, the C.A. ordered a new trial because the trial judge had not explained the psychiatric evidence on the issue of insanity to the jury.

See also *R. v. Levionnais* [1956] O.R. 230, 114 C.C.C. 266.

We cannot however, be confident that judges, lawyers and juries will understand their duties in this way, even assuming that there are available expert witnesses who will use this manner of expression. As mentioned above, not all psychiatrists have found themselves able to express themselves in this terminology. Differences of expression cause confusion, and tend to bring expert evidence into disrepute.

The attack on expert witness in *R. v. de Tonnancourt* (1958) 24 C.R. 19, 1 W.W.R. 337, 115 W.W.R. 337, 115 C.C.C. 154, was undeserved and unfair, and not in accord with the policies or practices of the courts. The decision is however, correct in stating that the issue of sanity or insanity is for the jury to decide. They may and ought to disregard the opinions of experts if other evidence requires them to do so. They may have to accept the opinion of one expert and reject that of another. They may find insanity without the aid of expert evidence but are most unlikely to do so. They are more likely to reject clear expert evidence supporting a finding of insanity. "Irresistible impulse" to perform an act or omission is not *per se* "insanity" within s. 16(2). This principle has been consistently maintained in Canada, England and Australia. See *R. v. Jessamine* (1912) 21 O.W.R. 392, 3 O.W.N. 753, 19 C.C.C. 214, 1 D.L.R. 285. But evidence that accused suffers from an irresistible impulse which could be a symptom of a disease of the mind that could affect his capacity to appreciate the nature and quality of his conduct must be received and explained to the jury who should consider it along with other evidence on the issue. *A.G. So. Australia v. Brown* [1960] A.C. 432, 44 Cr. App. R. 100, [1960] 2 W.L.R. 558, [1960] 1 A.E.R. 734 (P.C.).

See *R. v. Porter* (1956) 55 C.L.R. 182, (Aus. H.C.).

(4) *Capacity to Know that conduct is wrong*

(a) In England it is apparently established that "wrong" means "contrary to law" or "illegal".

R. v. Windle (1952 2 Q.B. 826, [1952] 2 All E.R. 1, [1952] 1 T.L.R. 1344, 36 Cr. App. R. 85.

The Australian High Court has refused to accept this rule, in *Stapleton v. R.* (1952) 86 C.L.R. 358, [1952] A.L.R. 929, where it was held that incapacity to know that conduct was morally wrong in the eyes of reasonable men, or to know that it was contrary to law, would support a finding of insanity.

The C.A. Ont. asserted substantially the same principle in *R. v. Laycock* [1952] O.R. 908, 15 C.R. 292, 104 C.C.C. 274.

The Royal Commission on Insanity, above mentioned, approved this interpretation, at p. 14, using the expression "not. . . merely legally wrong but wrong in the sense that it was something he ought not to do and for which he would be condemned in the eyes of his fellow men."

This language was used by McRuer C.J.H.C. in instructing the jury in *R. v. .* (1959) 3 Crim. L.Q. 151

See also *R. v. Harrop* [1940] 3 W.W.R. 77, 48 Man. R. 113, 74 C.C.C. 228, (1940) 4 D.L.R. 80, and *R. v. Cracknell* [1931] O.R. 634, 56 C.C.C. 190, [1931] 4 L.R. 657.

This interpretation has not been unanimously accepted in Canada.

In Alberta, it was held by the S.C. Appellate Division, in *R. v. Cardinal* (1953) 10 W.W.R. (N.S.) 403, 17 C.R. 373, that "wrong" means "contrary to law". This rule was applied, by implication, by the same Court in *R. v. Wolfson* (1965) 46 C.R. 8, [1965] 3 C.C.C. 304.

The Supreme Court of Canada has not had to decide the question. The present trend of its decisions suggests that it will adopt the interpretation of the *Royal Commission*, which appears to be correct.

(b) The problem which arose out of the language of the former Code, whether insanity required incapacity both to appreciate the nature and quality of conduct and to know that it is wrong, has been removed by the language of s. (2). Either form of incapacity requires a finding of insanity. Both questions must be left in the alternative to the jury *R. v. Laycock*, *R. v. Cardinal*, *R. v. Harrop*, above.

(5) *An act or omission*

The use of "an" has caused some question concerning a possible change in legislative intent. The Royal Commission above mentioned, at p. 34, expressed confidence that the courts would interpret s. 16 (2) as referable to the conduct which is the subject of the charge. This has in fact occurred, and no problem appears to have arisen in practice.

(6) *Specific delusion*

For examples of delusions held not to support a finding of "insanity" see *R. v. Riel* (1885) 2 Man. R. 321, 1 Terr. L. R. 23, leave to appeal refused (1885) 10 P. Cas. 675, and *Whitelaw v. Wilson* [1934] O.R. 415, 62 C.C.C. 172, [1934] 3 L.R. 554.

However, the existence of a specific delusion, even if it does not justify or excuse the conduct in question, is evidence from which "insanity" may be inferred, and the general question of "insanity" under s. 16 (2) must also be left to the jury.

See on this point *R. v. Moke* [1917] 3 W.W.R. 575, 12 Alta L.R. 18, 28 C.C.O. 296, 38 D.L.R. 441.

(5) *Insanity and Intoxication*

A highly intoxicated person who is otherwise normal may exhibit symptoms suggesting that he lacks the capacity mentioned in s. 16 (2), but he is not for that reason treated as "insane."

On the other hand, brain damage resulting in "disease of the mind" may be caused by excessive consumption of alcohol, particularly if it is carried on over a prolonged period. A person suffering from that condition may be "insane" within the meaning of s. 16. *D.P.P. v. Beard* [1920] A.C. 479, [1920] All E.R. 21, 89 L.J.K.B. 437, 122 L.T. 625, 36 T.L.R. 379, 26 Cox. C.C. 573, 14 Cr. App. R. 159.

See *McAskill v. R.* [1931] S.C.R. 330, 55 C.C.C. 81, [1931] 3 D.L.R. 166.

An advanced form of such "insanity" is *delirium tremens*.

A situation can arise in which a person who would not be "insane" if he were sober becomes "insane" within the meaning of s. 16 by reason of consumption of alcohol, perhaps in cases of functional psychoses but certainly if organic psychoses and epilepsy are regarded as "diseases of the mind" and if persons who act automatically as a result of those conditions must rely on "insanity" as a defence. Epileptic seizures may be brought on by alcohol and other organic conditions can be aggravated by it and persons so suffering may become unconscious automatons.

In *R. v. Schonberger*, paragraph 2 (2), above, the court held that the jury should be instructed that they should acquit on the ground of automatism if the accused might have been acting automatically as a result of a combination of alcohol and an organic condition.

If the rule in *Bratty's case* (paragraph (2), above) prevails, the judgment of the H. of L. in *A.G.N.I. v. Gallagher* [1963] A.C. 349, [1961] 3 All E.R. 299, [1961] 3 W.L.R. 619, 45 Cr. App. R. 316, may cause trouble. The result of the case may have been correct on the facts, but the Law Lords approved an instruction to the jury which forbade them to take the drinking of liquor into account on the issue of insanity and required them to look in this issue only at the state of mind of accused before he began to drink. They said that the defence of insanity, as opposed to drunkenness, could not be made good with the aid of liquor, and the defence of drunkenness was not available because accused had already formed the intent to kill before he began to drink. The second proposition in this statement can be valid only if the accused was never intoxicated enough to permit the defence of drunkenness to be considered at all, because he were so intoxicated as to be incapable of forming the intent necessary to commit murder he could not have continued to have the intent to kill. The first statement may have been accurate in relation to the facts of the case, since accused was described as a "psychopath", suffering from a "disease of the mind" which would be aggravated by drink in such a way as to cause him more readily to lose his self control, and it does not appear that his condition when intoxicated would have brought him within s. 16 (2).

However, the Law Lords purported to state a general rule precluding the effect of alcohol from being taken into account at all in any case on the issue of insanity. It is submitted that this type of dichotomy is an unfruitful exercise in arid semanticism, that there is no foundation or justification for such a rule, and that the proper course is to recognize the combined effect of alcohol and a "disease of the mind" if as a result of both together the accused is in the condition described in s. 16 (2).

4. Burden of Proof.

The effect of s. 16 (4) is to place the burden, both evidentiary and persuasive, of proving insanity, not beyond a reasonable doubt but on the balance of probabilities, on the party who asserts it. This may be expressed in several ways, such as, "on a preponderance of evidence," *Hebert v. R.* [1955] S.C.R. 120, 20 C.R. 79, 113 C.C.C. 97, or "to your reasonable satisfaction," *Clark v. R.* (1921) 61 S.C.R. 608, [1921] 2 W.W.R. 446, 35 C.C.C. 261, 59 D.L.R. 121.

It is wrong to use in Canada the expression "clearly proved", although it appears in the "McNaghten Rules."

R. v. Chupiuik [1949] 2 W.W.R. 801, 8 C.R. 398, 95 C.C.C. 198.

See *R. v. Cardinal*, above.

5. Who may raise issue of insanity under s. 16?

Although there is no direct Canadian authority, insanity is unanimously regarded as a defence. It would seem incongruous for the prosecution to ask for an acquittal, even by reason of insanity. Although the prosecutor or the Court may raise the issue of fitness to stand trial under s. 524, the decision to rely on freedom from criminal responsibility on the ground of insanity can, in the first instance, be raised only by the accused.

See *R. v. Smith* (1912) 8 Cr. App. R. 72.

In *R. v. Dashwood* [1943] I.K.B. 1, [1942] 2 All E.R. 586, 112 L.J.K.B. 257, 8 Cr. App. R. 167, counsel for accused wished to rely on insanity but accused could not do so, dismissed counsel, conducted his own defence and was convicted. On appeal, leave to introduce fresh evidence of insanity was refused. If accused was in fact insane, this procedural rigidity no doubt caused a miscarriage of justice.

On the other hand, insanity is rarely raised as a defence, except to capital murder charges, and even then not in all cases.

Sometimes, even in capital cases, it seems better from the tactical point of view to try for an outright acquittal. In other than capital cases, a term of imprisonment often seems less undesirable to the accused or his counsel than a potential lifetime detention in a maximum security mental hospital. It seems unjust to deprive the accused of the freedom of choice of defence, but, if he is "insane", can he make a rational choice, and, if not, can his counsel properly make it for him? On one side, the question is whether justice is served by accepting the chance that some "insane" persons with criminal tendencies may go at large. On the other hand, respect for liberty seems to preclude what is in effect penal confinement of one who has not committed the "actus reus", and who may be confined, if necessary, under non-penal provincial legislation.

In several recent English cases, where a defence based on diminished responsibility was introduced, the prosecutor was allowed to rebut this defence by introducing evidence and argument in support of a verdict based on "insanity" and this practice has been authorized there by statute. The courts also allow it, without statutory authority, where the defence is based on automatism. See *R. v. Kemp*, above, note 3 (2). The rule in *Bratty's case*, above, note 3 (2), where the alleged automatism is attributed to what the court calls a "disease of the mind", requires the issue of insanity and no other to be submitted to the jury, even though accused expressly disclaims any reliance on that defence, unless there is also evidence suggesting another possible cause of automatism, such as a blow on the head. The N.B.C.A. applied this rule in *R. v. O'Brien*, above, note 3 (2), although accused at trial, by her counsel, had expressly denied insanity and the only psychiatrist who testified had described psychomotor epilepsy as a "disease of the brain" not a "disease of the mind."

5. *Insanity and other defences*

Accused may rely alternatively on insanity and other defences, such as self defence, provocation or drunkenness. Each should be explained separately to the jury.

Lowther v. R. (1957) 26 C.R. 150.

6. *Appeal*

(a) Accused cannot appeal against an acquittal by reason of insanity. See s. 583. He appears to have no legal way of obtaining review of his case. This may result in a miscarriage of justice if the trial court has, against the expressed wish of the accused, found him not guilty by reason of insanity when he should have been acquitted on the ground of automatism. The Minister of Justice cannot intervene under s. 596, because there has been no conviction, and the Lieutenant-Governor cannot be compelled to release the accused.

(b) If the defence of insanity is rejected at trial, the Court of Appeal may accept it on appeal and make the appropriate order s. 596 (1) (d).

(c) The Attorney-General may appeal against acquittal by reason of insanity on a question of law. s. 584 (1) (a).

APPENDIX 14

ALTERNATIVES TO THE M'NAGHTEN RULES

(BY PROFESSOR STANLEY BECK.)

The law has long struggled with the problem of excusing from criminal liability those who cannot be held directly "responsible" for their acts. In 1724, the so-called "wild beast" test was enunciated in *Rex v. Arnold*. It provided for exculpation if the defendant "doth not know what he is doing, no more than a wild beast." Later in the eighteenth century, the "wild beast" test was abandoned and an accused escaped punishment if he could not distinguish "right and wrong". Little progress was made until 1843 when Daniel M'Naghten was found 'not guilty by reason of insanity'. M'Naghten's defense counsel relied in part on Dr. Isaac Ray's classic work 'Medical Jurisprudence of Insanity' which had been published in 1838. Dr. Ray's book, which was used and referred to extensively at the trial, contained many enlightened views on the subject of criminal responsibility in general and on the weaknesses of the right and wrong test in particular. Most importantly, the jury was told that the human mind is not compartmentalized, and that a defect in one aspect of the personality could spill over and affect other areas. Dr. Ray called knowledge of right and wrong a "fallacious test of criminal responsibility." M'Naghten's acquittal, however, raised such a public outcry that the House of Lords was summoned "to take the opinion of the judges on the law governing such cases." In responding for the fifteen judges who considered the problem, Lord Chief Justice Turdal enunciated what has come to be known as the M'Naghten Rules or M'Naghten Tests. In giving his opinion, Turdal did not follow Dr. Ray's work which he had relied upon at the trial, but rather reaffirmed the old right-wrong test. As a result, just at the time when psychiatry was beginning to develop, and to find a place in the criminal law, a nineteenth century idea of the human mind became the test of criminal responsibility whenever the accused's mental capacity was in issue.

The report of the English Royal Commission on Capital Punishment 1949-1963, articulated the basic defects of the M'Naghten rules. The Commission said, "They are not in harmony with modern medical science which, as we have seen, is reluctant to divide the mind into separate compartments—the intellect, the emotions and the will—but looks at it as a whole and considers that insanity distorts and impairs the actions of the mind as a whole." The Commission lends vivid support to this conclusion by pointing out that "it would be impossible to apply modern methods of care and treatment in mental hospitals, and at the same time to maintain order and discipline, if the great majority of the patients, even among the grossly insane did not know what is forbidden by the rules and that, if they break them, they are liable to forfeit some privilege. Examination of a number of individual cases in which a verdict of guilty but insane was returned, if rightly returned, has convinced us that there are few indeed where the accused can truly be said to have known that his act was wrong."

The right-wrong test, which considers knowledge or reason alone, is clearly an inadequate guide to responsibility for criminal behaviour. This is made clear by the following quote from Professor Sheldon Glueck of the Harvard Law

School, in discussing the right-wrong tests: "It is evident that the knowledge tests unscientifically abstract out of the mental make-up but one phase or element of mental life, and cognitive, which, in this era of dynamic psychology, is beginning to be regarded as not the most important factor in conduct and its disorders. In brief, these tests proceed upon the following questionable assumptions of an outworn era in psychiatry:

- (1) That lack of knowledge of the nature or quality of an act (assuming the meaning of such terms to be clear), or incapacity to know right from wrong, is the sole or even the most important symptom of mental disorder;
- (2) That such knowledge is a sole instigator and guide of conduct, or at least the most important element therein, and consequently should be the sole criterion of responsibility when insanity is involved.
- (3) That the capacity of knowing right from wrong can be completely intact and functioning perfectly even though a defendant is otherwise demonstrably of disordered mind."

It was the above objection to the M'Naghten rules that led the United States Court of Appeals for the District of Columbia, to formulate a new criterion of criminal responsibility in the case of *Durham v. United States*. The court said that "the fundamental objection to the right-wrong test, however, is not that criminal irresponsibility is made to rest upon an inadequate, invalid or indeterminable symptom or manifestation, but that it is made to rest upon any particular symptom." In attempting to define insanity in terms of a symptom, the courts have assumed an impossible role, not merely one for which they have no special competence. As the English Royal Commission emphasizes, it is dangerous "to abstract particular mental faculties and to lay it down that unless these particular faculties are destroyed or gravely impaired, an accused person, whatever the nature of his mental disease, must be held to be criminally responsible." "In this field of law as in others, the fact-finder should be free to consider all information advanced by relevant scientific disciplines." The court then laid down the following test: "An accused is not criminally responsible if his unlawful act was a product of mental disease or mental defect.

'Disease' was used in the sense of a condition which is considered capable of either improving or deteriorating. 'Defect' was used in the sense of a condition which is not considered capable of either improving or deteriorating and which may be either congenital, or the result of an injury, or the residual effect of a physical or mental disease. The court made it clear that the concept of the act being a product of mental disease or mental defect was of the essence of its test. The court said that a jury should be told that if it believed the accused was suffering from a diseased or defective mental condition, but believed beyond a reasonable doubt that the act was not a product of such mental abnormality, it may find the accused guilty. The court also made it clear that in its opinion, it was still leaving the determination of the ultimate question of fact to the jury. "But in making such judgments, they will be guided by wider horizons of knowledge concerning mental life. The question will simply be whether the accused acted because of a mental disorder, and not whether he displayed particular symptoms which medical science has long recognized do not necessarily, or even typically, accompany even the most serious mental disorder."

Not the least of the advantages of the *Durham* rule was that it ended the "professional perjury" long decried by psychiatrists. To get around the unreality of the M'Naghten rules psychiatrists often find it necessary to testify the accused did not know that his act was "wrong" when the facts do not warrant that conclusion. This effect of the M'Naghten rules was severely criticized by the late Mr. Justice Frankfurter in giving evidence before the Royal Commission on Capital Punishment. "The M'Naghten rules were rules which the Judges, in response to questions by the House of Lords, formulated in the light of the then existing psychological knowledge—I do not see why rules of law should be arrested at the state of psychological knowledge of the time when they were formulated. If you find rules that are, broadly speaking, discredited by those who have to administer them, which is I think, the real situation, certainly with us—they are honoured in the breach and not in the observance—then I think the law serves its best interests by trying to be more honest about it. I think that to have rules which cannot rationally be justified except by a process of interpretation which distorts and often drastically nullifies them, and to say the corrective process comes by having the Governor of a State charged with the responsibility of the deciding when the consequences of the rules should not be enforced, is not a desirable system. I am a great believer in being as candid as possible about my institutions. They are in large measure abandoned in practice, and therefore I think the M'Naghten rules are in large measure shams. That is a strong word, but I think the M'Naghten rules are very difficult for conscientious people and not difficult enough for people who say "we will just juggle them". I dare to believe that we ought not to rest content with the difficulty of finding an improvement in the M'Naghten rules."

As welcome as the *Durham* test was, it has come in for severe criticism both from the bench, the bar, and the medical profession. The major objection to the *Durham* rule is that, in effect, it takes away from the jury the decision as to whether the accused should be held criminally responsible for his conduct. The test of criminal responsibility is, and must be, a legal test. It is for the jury, as society's designate in the administration of justice, to decide on the basis of evidence it has heard, whether the accused should be held responsible. Under the *Durham* test, if the psychiatrist testifying agrees that the defendant has a "Disease" and the act was its "product", then the issue is effectively taken from the jury. What is required is a standard of criminal responsibility that will allow psychiatrists to express themselves in terms meaningful to them, and yet will allow the jury to decide upon the basis of all the evidence whether or not the accused should be held responsible. A further difficulty with the *Durham* rule is the disagreement among psychiatrists as to what is a mental disease. Does it include all forms of psychosis, neurosis, and all states of psychopathy? The *Durham* rule gives no clear answer. The term 'mental disease' then can mean in any given case whatever the particular testifying psychiatrist says it means. There is clear disagreement among psychiatrists as to whether or not the various types of psychopathic conduct qualify as a mental disease. "This is not simply a matter of experts disagreeing on opinion or on diagnosis, which often occurs, but is disagreement at the threshold on what their own critical terms mean." These factors led Judge Burger, some seven years after *Durham* was decided, to remark in *Blocher v. United States* that "a term such as mental disease which has no fixed, agreed or accepted definition in the discipline which is called upon

to supply expert testimony is a tenuous and indeed dangerously vague term to be a critical part of a rule of law on criminal responsibility".

Another objection to the *Durham* rule is that the unlawful conduct must be a product of mental illness. Like the term "disease", the term "product" is inadequate. The idea of mental illness producing the criminal conduct repeats the error of the M'Naghten rules. Behaviour and mental illness are inseparable, they are two sides of the same coin. Clearly what Judge Bazelon had in mind was a causal connection between the mental illness and the criminal conduct. The reality of the personality, however, does not allow for such a simple link. Moreover, as Judge Burger pointed out in *Blocker*, "the fact that a criminal act can be the product of a mental disease should not *ipso facto* excuse the defendant; it should excuse only if the conditions described as a mental disease affected him so substantially that he could not appreciate the nature of the illegal act or could not control his conduct." The Royal Commission on Capital Punishment made the same point when it said, "There is no *a priori* reason why every person suffering from any form of mental abnormality or disease, or from any particular kind of mental disease, should be treated by the law as not answerable for any criminal offence that he may commit, and be exempted from conviction and punishment. Mental abnormalities vary infinitely in their nature and intensity and in their effect on the character and conduct of those who suffer from them."

In 1964, The American Law Institute published its Model Penal Code. The Model Code is a result of ten years of research and deliberation by the leading judges, lawyers, law professors, psychiatrists and criminologists in the United States. The drafters of the Code, while recognizing the need for a change in the M'Naghten rules, also rejected the *Durham* test. The drafters made particular reference to the ambiguity of the term "product". "If 'product' is interpreted to lead to irresponsibility unless the defendant would have engaged in the criminal conduct even if he had not suffered from the disease or defect, it is too broad: an answer that he would have done so can be given very rarely; this is intrinsic to the concept of the singleness of personality and unity of mental processes that psychiatry regards as fundamental. If interpreted to call for a standard of causality less relaxed than but—for cause, there are but two alternatives to be considered:

- (1) a mode of causality involving total incapacity, or
- (2) a mode of causality which involves substantial incapacity

But if either of these causal concepts is intended, the formulation ought to set it forth."

The drafters of the Code defined the proper question to be whether the defendant was without capacity to conform his conduct to the requirements of the law. The test adopted does not demand complete impairment of capacity. It requires *substantial* impairment thus recognizing the psychiatric reality of the situation. The complete test is as follows:

1. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

2. As used in this Article, the term "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

Under the Code test a psychiatrist will be free to testify unhampered by any artificial concepts. At the same time the essential question will be left to the jury. It will be for the jury to say, on the basis of all the evidence, whether the defendant lacked the substantial capacity to conform his conduct to the requirements of the law. If he did, then treatment not punishment is what is required, and a verdict of not guilty by reason of insanity is proper. It is well to emphasize that such a verdict does not mean that the accused is set free. Rather he is committed to an appropriate institution so that his illness may be treated with the hope that someday he might be returned to society.

In February of this year the United States Court of Appeals for the Second Circuit, perhaps the most respected and influential Court of Appeals in the United States, rejected the *Durham* tests and adopted the test laid down in the Model Penal Code. The Courts of Appeal for the District of Columbia, and the Third and Tenth Circuits have all used the Model Code draft as the essential basis for reformulating the M'Naghten rules in their jurisdictions.

1. *United States v. Freeman* (1966) 357 F.2d 606.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 20

WEDNESDAY, NOVEMBER 30, 1966

Respecting the subject matter of
Bill C-26, An Act to Amend the Criminal Code
(Safety Devices for Automotive Vehicles)
Bill C-49, An Act to Amend the Criminal Code
(Dangerous Motor Vehicles), and
Notices of motion Nos. 26, 31, and 38.

WITNESSES:

From American Motors Corporation: Mr. K. B. Raham, Chief Product Engineer; and Mr. W. S. Berry, Director, Technical Staff. *From Chrysler Corporation Limited:* Mr. G. A. Lacy, Chief Engineer and Director of Product Engineering; and Mr. R. C. Haeusler, Automotive Safety Engineer. *From Ford Motor Company:* Mr. W. Scott, Automotive Safety Director of the Car and Truck Division; and Mr. C. R. Briggs, Director of Safety Research. *From Kaiser Jeep of Canada Limited:* Mr. Roy P. O'Callaghan, Technical Manager. *From General Motors Corporation:* Mr. W. A. Woodcock, Chief Engineer; and Mr. K. A. Stonex, Executive Engineer, Automotive Safety Engineering.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (High Park)
Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,

Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 10)

¹Replaced Mr. Laflamme on November 29, 1966.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

TUESDAY, November 29, 1966.

Ordered,—That the name of Mr. Cantin be substituted for that of Mr. Laflamme on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 30, 1966.

(24)

The Standing Committee on Justice and Legal Affairs met this day at 8:20 p.m. in the Ambassador Auditorium of the University of Windsor. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Addison, Aiken, Cantin, Cameron (*High Park*), Forest, Goyer, Grafftey, Guay, Honey, Latulippe, Mather, Pugh, Ryan, Tolmie, Vahn, Whelan (16).

In attendance: From American Motors Corporation: Mr. K. B. Raham, Chief Product Engineer; and Mr. W. S. Berry, Director, Technical Staff.

From Chrysler Corporation Limited: Mr. G. A. Lacy, Chief Engineer and Director of Product Engineering; and Mr. R. C. Haeusler, Automotive Safety Engineer.

From Ford Motor Company: Mr. W. Scott, Automotive Safety Director of the Car and Truck Division, and Mr. C. R. Briggs, Director of Safety Research.

From Kaiser Jeep of Canada Ltd.: Mr. Roy P. O'Callaghan, Technical Manager.

From General Motors Corporation: Mr. W. A. Woodcock, Chief Engineer; Mr. K. A. Stonex, Executive Engineer, Automotive Safety Engineering.

The Clerk read the orders of reference pertaining to the automobile safety bills and notices of motion before the Committee.

After thanking Dr. Leddy, President of the University of Windsor for his kindness in permitting the Committee to use the University's facilities, the Chairman introduced the members of the Committee.

The Chairman then introduced the various witnesses present, and thanked General Motors and Ford for the valuable visits in the morning and afternoon respectively.

The meeting was then opened to questioning by the Committee.

Mr. Honey, on a point of order, suggested that in view of the many questions, and in view of the shortness of time, that questions be answered by the representative of the automobile industry, and that others comment only if they are asked or if they are specifically interested.

Following discussion,

*Agreed,—*That the procedure suggested by Mr. Honey be followed.

Mr. Whelan, on a point of order, suggested that the public be permitted to move closer in order to hear better.

Following discussion,

*Agreed,—*That the public be permitted to move closer.

At 9:15 p.m., the Chairman invited Mr. Forest, the Vice-Chairman, to assume the Chair.

Mr. Grafftey suggested that the various automobile manufacturers file with the Clerk, their budget figures pertaining to safety research. Mr. Stonex indicated these figures would be impossible to produce since budget figures are not, and could not, be broken down as Mr. Grafftey suggested.

Mr. Tolmie, on a point of order, suggested that Mr. Grafftey keep his supplementary questions as brief as possible in order to give other members a chance to ask questions.

Following discussion, the Chairman asked Mr. Grafftey to keep his supplementary questions as brief as possible.

Following discussion, on a motion by Mr. Honey, seconded by Mr. Mather,

Resolved,—That with respect to recalls by the automobile manufacturers for the years 1963, 1964, 1965, 1966, 1967, the U.S. automobile companies be requested to file this information with the Clerk of the Committee, and that the Canadian automobile companies file this information with the Clerk of the Committee as soon as possible.

At 10:20 p.m., the meeting adjourned until 2:30 p.m. Thursday, December 1966.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

WEDNESDAY, November 30, 1966,
Windsor, Ontario.

The CHAIRMAN: Members of the Justice and Legal Affairs Committee we have a quorum, and I will call the meeting to order.

This is a regular meeting of the Standing Committee on Justice and Legal Affairs of the House of Commons, and the ordinary rules of procedures which we follow in committee meetings in Ottawa will be followed here.

In order that you may better understand what we are doing here today, I am going to ask the Clerk of the Committee to read the terms of reference.

The CLERK OF THE COMMITTEE: Wednesday, March 30, 1966, Ordered,—That the subject-matter of the following Private Members' Bills be referred to the Standing Committee on Justice and Legal Affairs:

Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles).

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles).

Attest. Leon-J. Raymond, The Clerk of the House.

The CHAIRMAN: I would like, as the first order of business, to thank President Francis Leddy, President of the University of Windsor, for his courtesy, assistance and co-operation in making available the accommodation we have here tonight. We appreciate it very much. We appreciate the assistance which members of his staff have given to the Committee.

We also welcome very, very much, indeed, the members of the audience. We hope they can hear quite clearly, and that the proceedings here tonight will be of interest to you.

I am going to introduce the members of the Committee. On my left here is Mr. Yves Forest, the Vice-Chairman of the Committee; Mr. Perry Ryan; Mr. Ian Vahn; Mr. Eugene Whelan, whom I imagine everybody here knows; Mr. John Addison; Mr. Guay; Mr. Latulippe; Mr. Barry Mather; Mr. Cantin; Mr. Aiken; Mr. Pugh; Mr. Honey; Mr. Goyer; and Mr. Tolmie. These are all members of the House of Commons, and they are your representatives at Parliament because here you are elected to Ottawa you are not only elected to represent a constituency, but you are elected to represent the whole of Canada.

We have a distinguished panel of witnesses tonight. I have not yet had the opportunity of meeting them personally.

From the American Motors Corporation we have Mr. K. B. Raham. Would you please stand up, Mr. Raham; and also Mr. W. S. Berry.

From the Chrysler Corporation we have Mr. G. A. Lacy, Chief Engineer and Director of Product Engineering; and Mr. R. C. Haeusler, Automotive Safety Engineer.

From the Ford Motor Company we have Mr. Carl Purdy, Product Engineer and Mr. C. R. Briggs, Director of Safety Research, whom we had the privilege of having with us this afternoon; and Mr. W. Scott. We also had the pleasure of questioning Mr. Scott and getting answers from him.

From the Kaiser Jeep Company of Canada, Mr. G. H. Munro, Vice-President and General Manager; and Mr. Roy P. O'Callaghan, Technical Manager.

From the General Motors Corporation, Mr. W. A. Woodcock, Chief Engineer; Mr. F. M. Coffey; and Mr. K. A. Stonex, Executive Engineer, Automotive Safety Engineering.

Those are our witnesses tonight.

Our procedure will be to allow the members of the Committee to question these gentlemen. I am going to suggest, if I may, that the American Motors Corporation might answer the first question; the Chrysler Corporation Limited, the second; the Ford Motor Company, the third; and that Kaiser Jeep of Canada Ltd. and the General Motors Corporation indicate which of the members of their delegation they wish to answer the questions.

If that is not satisfactory, you may proceed as you wish, gentlemen, but we know that we are going to get a great deal of very, very valuable information from you.

In conclusion, may I express to the General Motors Corporation, to the Ford Motor Company and to their various officers, our thanks and appreciation for the proceedings so far today.

We visited General Motors this morning, and we saw demonstrations on their testing grounds; we saw a demonstration of a new safety bridge and we also saw moving pictures showing what happens when a car crashes, and so on.

At the Ford Motor Company we saw, in slow sequence, pictures of what happens when a car travelling at 20 miles an hour meets an immovable object.

We also had the benefit of a long panel discussion with members of the Ford Motor Company.

All of this has been very beneficial, and all of it was very interesting.

At a later stage in the proceedings I am going to ask my Vice-Chairman to assume the Chair while I sit down and relax and enjoy myself.

Without further ado, we will carry on with our proceedings. I think I saw Mr. Addison's hand go up to ask the first question, followed by Mr. Aiken and then Mr. Ryan.

Mr. ADDISON: Mr. Chairman, I asked Mr. Scott this question this afternoon *in camera*. I would like to ask it again in the Committee, and I would like to ask it of each one of the individual automobile representatives.

The question is this, and I will frame it much as I did this afternoon. Quite obviously the automobile manufacturers are doing everything they can to bring about a safer vehicle. It is a crash program, and I think they admit this fact. It has been suggested that perhaps this should be taken outside the area of competition; that the principal automobile manufacturers in North America should pool their resources and establish a non-partisan organization in order to speed up research on safety equipment in automobiles. I also understand that the

decision taken by the representatives in the United States was that free competition would serve the purpose better than having the manufacturers group their safety organizations together in one unit.

I have been told that perhaps the Justice Department in the United States would not approve of the automobile manufacturers grouping together in this type of effort.

Would the automobile manufacturers consider setting up this type of organization in Canada—a Manhattan project on safety in Canada—sponsored and staffed on a non-partisan basis by the various manufacturers, to produce and accelerate safety equipment which can be brought forward and put on 1967 and 1968 automobiles?

Mr. W. SCOTT (*Automotive Safety Director of the Car and Truck Division, Ford Motor Company*): I think that is a very appropriate question. As I indicated this afternoon, I personally, have many doubts that a co-operative venture among the many manufacturers towards safety research would be as productive as it would seem to be at first thought. We, of course, have been trained to be so competitive that it is difficult for us even to think in these terms. As you know, most of the laws that govern us are prohibitory in nature—thou shalt not discuss prices with General Motors, and so forth—so that we are very chary of alliances with our competitors.

I think the suggestion that there be a facility in Canada, where the law does not prevent this type of combination, should be considered in terms of the facility problem that we would have. Each of us, as you know, has multi-million dollar test facilities located in our various organizations. Our activities at Ford, for example, are quite interdependent; we do not have the same facilities in each building, and so forth, because we take advantage—it is almost like a college campus—of our total facilities for the use of all of the research activities.

I would visualize serious problems, in the establishment of adequate facilities with adequate equipment, of duplicating what we already have; I would be very concerned with what I consider a serious management problem on who would direct the research; I would be concerned, too, since the various companies make products that have such different attributes, that we would have differing degrees of interest in certain types of research. For example, one of the companies largely produces unitized construction bodies; another company largely produces bodies for frame-type cars. Working in crash research, for example, yields entirely different answers when one deals with unitized bodies versus frame cars. I can visualize a serious problem in agreements being reached with regard to the contribution of funds among the three to fund a joint effort.

One might ask whether we should split it equally; whether we should contribute in terms of our respective market shares, or our respective profits or losses, whatever the case might be.

In total, I can only sense that a careful study would raise enough questions to create a real doubt in my mind that a common research would be more productive than the competitive urge that each company has to outdo the other and, in effect, to turn to the safety front the same kind of competitive strengths that have created the very companies that now survive in this terribly competitive industry. Therefore, I for one, would say that my initial response would be

that, although it is a worthwhile suggestion, I can visualize serious problems of implementation and that I truly doubt that the cause of safety would be advanced beyond that which each company working alone could produce.

Mr. ADDISON: Mr. Chairman, may I ask Mr. Scott if that is a personal opinion, or is it a company policy?

Mr. SCOTT: I have to explain that is a personal opinion. The question has just, in effect, been asked of me.

Mr. ADDISON: I asked it of you as a representative of your company. You are here as a representative of your company, are you not?

Mr. SCOTT: I am here as a representative of Ford U.S. and I am delighted to have the opportunity to be with you.

I would suggest that if you wish to make a formal inquiry it would be most proper to do so of the Ford Motor Company of Canada. We would, of course, be in discussion with them on the matter.

Mr. G. A. LACY (*Chief Enigneer and Director of Product Engineering, Chrysler Corporation Limited*): In practically all respects I agree with Mr. Scott in what he has said, but I would like to emphasize to the Committee that there is a high degree of co-operation in the engineering trade in the automotive industry. The Society of Automotive Engineers shares its experiences and shares its research results most extensively. On the SAE committees sit the representatives of certainly all the automotive manufacturers plus tire manufacturers and all sorts of companies who are in any way related to the automotive trade.

I think it would be a mistake on the part of the Committee to think that this is an entirely closed shop, technologically, one company to another. For instance, going beyond the SAE there is the co-operative research committee which is the oil companies combining with the automotive companies on mutual problems and to go through mutual research. But this group has no facilities of its own. All of the research and development work is carried out at the research and laboratory centres of the co-operating companies; and the committees will establish priorities of work to be done, standards to be set and this work will be carried out by the committee members in their own shops. I think it should be understood that there is already a high degree of co-operation in engineering.

Mr. ADDISON: You are representing your company and your company policy is such as not to suggest that a co-operative venture in Canada into safety research would be practical. Is that your company's position?

Mr. LACY: I have not had a mandate from my company on that question. It has never come up. I think it would be unfair for me to express an inviolable comment on it; but I think I could say that it would almost assuredly be the way Mr. Scott has expressed it. We would not think, as a corporation, that a combined research activity toward safety, or any other thing would necessarily end in a positive result, any more than medical research in all the universities should be pooled into one place, where you have one director, and one line to follow, as it were. I think you will find that medical research goes on in many areas, in many divergent ways, and the results of this are that some are successful and some are not successful; but the successful ones eventually get into the common field of understanding and are usually followed.

Mr. K. B. RAHAM (*Chief Product Engineer, American Motors Corporation*): I think I have very little to add to what the two previous speakers have said.

There are great facilities, of course, in the United States and to try and duplicate in Canada what is being done where our cars are basically designed would certainly pose a serious financial problem to the Canadian counterparts of the industry.

Currently, we have Canadian engineers who spend a fair amount of time in the United States at the safety laboratories co-operating with them as certain problems may relate to conditions in Canada; so that already we have co-operation between companies across the border, but not necessarily between competing companies except, as Mr. Lacy says, where we co-operate through the Society of Automotive Engineers and various other engineering organizations, where there is a great sharing of wealth of design and test results that we have obtained.

Mr. ADDISON: Is that your personal opinion, or your company's position?

Mr. RAHAM: Well, there again, I do not know that this question has ever come up through the company, but I think I can speak relatively clearly for the company in this regard. I would not want to commit my company to what I am saying here tonight without further consultation with them, but certainly I have been with the company, I think, long enough to understand how it works, and I think I am fairly accurate in this answer.

The CHAIRMAN: Would Mr. Munro, or Mr. O'Callaghan, like to make a comment on the question?

Mr. G. H. MUNRO (*Vice-President and General Manager, the Kaiser Jeep Company of Canada*): Mr. Addison, I do not think we can say very much more than what has been said. We are also in a position where I could not speak, personally, for my company, as a matter of policy.

I think that the points which have been brought out are very clear to anyone who is associated with this type of project.

The automotive industry, at the moment, makes considerable grants to universities for research, and I do not think this should be lost sight of in the overall picture. This is something which Mr. Lacy was drawing attention to in the medical field; and I do believe that competition is the first prime point at which we should look, and the facilities that you would require to carry out such a project in Canada.

Mr. PUGH: May I ask a supplementary question? You have stated that you have research association. I am wondering whether, at the federal level in the United States, there is any organization with which individual companies file the results of the safety work which you are doing by yourselves? Is there any law which demands that you file with such an association, and, if so, have they any published literature on the subject?

Mr. R. C. HAEUSLER (*Automotive Safety Engineer, Chrysler Corporation Limited*): Gentlemen, the question is whether we have any requirement to file the results of our research or our engineering. There is no requirement. There is a regularly constituted practice whereby we distinguish, of course, between research and engineering. The research results are very readily pooled. The

engineering results which are, in effect, the development of vehicles in a competitive market, are quite proprietary, and so we separate these.

The basis for this application work of safety principles is indeed widely promulgated. It is widely distributed through channels such as the papers of the Society of Automotive Engineers; it is distributed through our participation in the staff conferences on car crash technology and car crash research; the papers of the American Association of Automotive Medicine; and our participation in the American Medical Association's Committee on Medical Aspects of Automotive Safety. Through these various channels we do, indeed, distribute the results of the research part of our work, but engineering is not distributed except in so far as it describes accomplishments, for example, through the Society of Automotive Engineers technical papers.

The CHAIRMAN: Thank you very much.

Can I now have a spokesman from the General Motors Corporation?

Mr. W. A. WOODCOCK (*Chief Engineer, General Motors Corporation*): I think the spokesmen from the other companies have said just about all there is to say on this subject.

All I can perhaps add is that it is a competitive industry, and that General Motors want to keep it this way; I feel, and I am sure the company feels, that lack of competition would not be productive in terms of more safety.

I think, too, we must realize that the major part of the engineering of the industry lies in the U.S., and that this is just a fact of life.

The CHAIRMAN: Thank you very much, Mr. Woodcock. I think Mr. Addison has another question.

Mr. ADDISON: I have just one more comment. It is evident I think, now, to the Committee that the gentlemen before us are not authorized to speak about their companies' policy decisions, in connection with a major undertaking such as this.

I would like to bring that to the attention of the Committee.

Mr. LACY: Could I comment on that, Mr. Chairman?

The CHAIRMAN: Yes, certainly, Mr. Lacy.

Mr. LACY: I think it would be most unfair to ask any group of people from an industry to promulgate new policies which have never been thought of before. I do not think that even the presidents of our companies, would, without consultation with their boards of directors, come up with completely new policies which have just never been discussed.

I do not think that it is fair to say that we are not competent to speak in the realm of the activities which we have been asked to discuss.

Mr. AIKEN: Mr. Chairman, I would like to ask why so many vehicles have been recalled this year for safety checks. There seem to have been more in the last few months than there were previously. I wonder if we can have an explanation whether this is because there is more care on the matter, or is it merely that these shortcomings have been discovered by more careful research?

Mr. RAHAM: Mr. Aiken, I believe that call-backs, or car campaigns, have always gone on. They are not new to us, and I am sure that they are not new to

any of the other automotive companies. Of late, however, they have become more public, and I think the public is more aware of these than they ever were before. Certainly, call-backs have been going on for years and years, and many of them—in fact, probably the greater majority—do not concern safety. They might concern such things as a better-operating heater, to produce more heat in the car, which, in turn, is really for the driver's comfort.

I do not think that there is any increase in call-backs at this time over what there ever has been; but they are certainly more public now.

Mr. AIKEN: I would take it from that, that it is really a case of more public interest and more reaction when a group of vehicles is recalled?

Mr. RAHAM: Yes, I would say that is true.

Mr. AIKEN: I wonder if any of the other people could tell me whether there have actually been more recalls in 1966 than in previous years?

The CHAIRMAN: Mr. Woodcock, would you like to answer that?

Mr. WOODCOCK: No, I cannot answer that, specifically, for the industry. I was going to comment on the earlier question of call-backs.

I think there is quite a misunderstanding of what this call-back may mean. For instance, in some instances we have some had wrong serial numbers on trucks. This could appear to be a call-back procedure. The owner, or customer, is in no danger because he has a wrong serial number. I am not suggesting that they are all this way, but many of them are and these add to the numbers; and I think that numbers in themselves might be meaningless.

Another instance is that perhaps find we out that we have put 15 wrong generators in 4,000 cars. We have to call back all 4,000 cars just to find the 15. Numbers can be meaningless in this context.

Mr. K. A. STONEX (*Executive Engineer, Automotive Safety Engineering, General Motors Corporation*): I would like to comment that under current legislation in the United States we are required to file notices with the Secretary of Commerce on any call-backs and, further, that the industry in the United States, in response to a request from Senator Rubicoff, gave a list of all the call-back campaigns for the last six years or so. A little bit of confusion exists between those that have been called back on 1967 models and the number that have been called back during the past five or six years.

I do not know anything about the numerical comparisons over the years, but the program is no different this year from it has been in the past except that we are obliged to file these with the Secretary of Commerce. The foreign manufacturers, the import people, have also, on a voluntary basis, filed reports of call-back campaigns. Thank you.

The CHAIRMAN: Would one of the representatives of the Ford Motor Company care to add anything?

Mr. SCOTT: I cannot add much, Mr. Chairman. I join in the comments of the others. I think there has been a rather sensational press reaction, and perhaps, a public misunderstanding, in connection with these call-backs. I am not acquainted with the reporting that took place here in Canada. It was not too well handled in the United States with regard to some of the facts. The

general impression was given that a great number of dangerous cars were on the highways, and the government was saying publicly that this fact existed and, therefore, that it was aiding and abetting the cause of safety.

The facts are really quite the opposite. Every person who has purchased any car from any of the manufacturers, about which there was any suspicion of a defect, had been notified of it by registered mail as much as several months earlier than its revelation. I would put it this way, that at the point in time that these recall campaigns were made public in the United States the only people who did not know about the campaigns were those who did not have the cars with the suspected defects.

I wish to emphasize the point made by Mr. Woodcock, that it is often necessary to recall what sounds like an enormous number of vehicles to trace a known quantity of small defects.

I would like to cite a similar example. I understand that a campaign was conducted here in Canada with regard to a number of Ford trucks which were described in the newspapers as having defective brakes.

The facts are very simple. In the course of truck assembly in one of our plants a worker was crawling through a truck. He caught his foot under the brake pedal and as he pulled it out and exerted considerable pressure he disengaged a push rod from a master cylinder. This should not happen even under such unusual circumstances, and we examined it immediately and found that it had to do with some little retaining rings.

We immediately checked with our vendor who supplied these and we found that a small lot of these retaining rings had been mistreated in heat treat; they were brittle. Our vendor did not know how many he had sent to us; we did not know how many we had received; we knew that the lot was a single lot from only one of his plants; yet we decided that we would campaign every single light truck that had been made from job one until that date.

I am confident that we do not have more than a 2 or 3 per cent problem, but the numbers sound enormous. I state this only so that you understand the extent to which we will go to identify and isolate the suspect units in which there may be a potential defect.

I should further add that the likelihood of the separation occurring in use was very slight; in effect, it would require a person to reach the brake pedal with his hands and tug with far more power than most of us would have in that position to have it even occur.

We went ahead and did this, and we always do things like this. We did them before a safety act and we do them after the safety act. The difference is that there is now a public announcement made, and in what I consider to be an unfortunate way the public is lead to believe that the total number of units being inspected is actually defective, and that is not the case.

Mr. AIKEN: May I ask just one more question on that subject, and then I will give up the floor.

We read in tonight's newspaper of the 23 safety standards set down by the United States Administrator of the Highway Safety Act. I would merely like to ask whether the industry will meet these auto safety standards for the 1966 models?

Mr. WOODCOCK: I do not think we have the standards yet, Mr. Aiken. The standards have not been promulgated even in the press.

They have indicated the areas in which the standards will be written, and they will cover these areas, but I do not believe the standards have yet been established. I would say that if the standards are reasonable they likely will be met.

Mr. AIKEN: There is time, if the standards are what you expect then to be, to include them in the 1968 models?

Mr. WOODCOCK: Yes; this is our hope.

The CHAIRMAN: Mr. Munro, or Mr. O'Callaghan, would you like to make any comment?

Mr. MUNRO: On the last question?

Mr. AIKEN: Yes.

Mr. MUNRO: No, I do not think we can add much.

On the last supplementary question that was posed Mr. Aiken, it is our understanding at the moment that what Mr. Lacy has said represents the true picture.

On the question of recalls I think that we in the industry are sufficiently aware of the fact that this is not something new; that this is something which has a history to it; and that it is a question of public awareness, of more press notice. I, for one, do not believe that is a bad thing. I am not suggesting that. I think, in the long run, that it is probably a good thing; but it is important to get the numbers in their true perspective.

Mr. HONEY: Mr. Chairman, on a point of order. I wonder if I could make the respectful suggestion that we might move ahead more quickly if you, as Chairman, sir, would agree that perhaps a representative would answer a question and only if other representatives do not concur in his answer, do these others comment? Otherwise, I am afraid that we are going to have a lot of repetitious answers.

The CHAIRMAN: The questions which have been asked up till now have been general questions and I thought that all the representatives might want to state their position in regard to them.

However, we can probably follow that procedure.

Mr. WHELAN: Mr. Chairman, on a further point of order. I understand that there are complaints from the press and from some of the members that they are not hearing too well; the audience is not hearing the witnesses and they are not hearing the questions which are asked. If they so desire, Mr. Chairman, I think it would be in order to allow them to move closer. Perhaps, also, those who are asking and answering questions would identify themselves more clearly, because they are not getting through.

The CHAIRMAN: I think that is also an excellent suggestion.

Mr. WHELAN: Because in the Committee meetings in the House of Commons they are much closer to us.

The CHAIRMAN: If the people at the rear of the hall would like to take advantage of this we will ask you to move closer around the table so that you can hear better.

Mr. GRAFFTEY: Mr. Chairman, may I ask a quick supplementary question of Mr. Lacy?

The CHAIRMAN: Mr. Grafftey has a brief supplementary, and then Mr. Ryan will ask questions.

Mr. GRAFFTEY: In your dialogue, Mr. Lacy, you used the expression that you could comply with the regulations if they were reasonable. Is my impression not correct that the regulations that Mr. Haddon is going to announce will be the law of the land, and that there will be no question of anyone's interpreting whether they are reasonable or not?

Mr. LACY: If that is your position, Mr. Grafftey, why ask the question? If it is the law, we must, so why ask?

Mr. GRAFFTEY: No, I am asking you the question. You made the statement Mr. Lacy, that you will comply if they are reasonable. Are these regulations not going to be the law of the land? That is what I am asking you.

Mr. LACY: If they make it the law of the land that cars will have to fit a person 10 feet tall I do not think we can meet it.

Mr. GRAFFTEY: Who will be the judge of whether these standards are reasonable or not?

Mr. LACY: You are really asking me to speculate on something which has not been promulgated. Perhaps Mr. Haeusler can tell me when they will be promulgated.

Mr. HAEUSLER: The proposed standards will be available tomorrow, at the end of the day at the latest, but the final standards for effect will be published on January 31, 1967. The publication tomorrow is for comment.

Mr. LACY: You see, after tomorrow the industry will get back with Mr. Haddon and say: "Mr. Haddon, this is reasonable to us; this we cannot meet by then." What comes out on January 31, will determine whether or not we meet them. I cannot speculate on them at this point.

Mr. GRAFFTEY: Therefore, if you convince Mr. Haddon that his regulations are not reasonable he will relax them to suit you?

Mr. LACY: You would have to ask Mr. Haddon that, Mr. Grafftey.

Mr. RYAN: Mr. Chairman, I think we learned today, as a result of our visit to G. M. and Ford, that there are two areas in a motor vehicle in front of the driver or occupants that can lessen the severity of an impact. The first area is between the bumper and the front of the engine block and the second area is between the engine block and the fire panel or footboard of the car.

Let us consider these areas. I was wondering if there is any material that is recognized today as best for energy-absorption, which could be put into these areas, and also if there are any publicized studies on basic energy-absorption.

The CHAIRMAN: Who is going to undertake to answer that question?

Mr. RYAN: Mr. Scott was in that area this afternoon, but I hesitate to—

The CHAIRMAN: Mr. Stonex has stood up.

Mr. STONEX: There are a few studies showing the amount of energy-absorption in the front end. These were done by Lundstrom and Calais at the sta-

conference in California two or three years ago, and in a paper before the Canadian Highway Traffic Association in Toronto two years ago I gave these figures.

In a later paper by Mr. L. C. Lundstrom, who is the director of automotive safety for General Motors in Los Angeles, at the SAE meeting last August, he showed that, because of the sequence of events, the car has already stopped before a passenger collides with the instrument panel; that is, in the speed range, from what I could observe, of 25 to 65 miles per hour the collision is all over before the unrestrained passenger touches anything.

The only hope that I can see is if we can devise restraint systems which are taut and snug and will begin to decelerate the occupant practically at the moment that the car begins to decelerate.

I can quote you, and I have used, the results of Fredericks of Ford, which show that belted dummies in an automobile do not begin to develop load in the seat-belt until the collision is over, and these are the conventional lap belts. It is not, in our opinion, of any avail at all to consider very much more concern about energy-absorption in the front end of the vehicle until we have developed restraint systems which tie the occupant to the vehicle very effectively, so that within 10 seconds instead of within 50, he begins to get some load in the seatbelt.

This is a subject of deep concern and interest, and I can assure you that the experts in all of our industries are studying this very carefully. It is not a simple, pen-and-shut case.

Mr. RYAN: Is there no known material now that would fill either of these areas?

Mr. STONEX: It would not make any difference, you see. If I run into a tree and the car stops before I strike the instrument panel, how the car stops is of no importance at all. What is necessary is for me to have a restraint system that ties me to the car so tightly that I begin to slow down as the car begins to slow down.

Mr. RYAN: This would be of primary assistance but would not the other be secondary assistance? Would it not lessen the severity of impact, particularly speeds over 20 miles per hour?

Mr. STONEX: In all the tests that we have seen the car has already stopped before the occupant collides with the instrument panel. With our energy-absorbing column, where we do not have quite as much distance to travel, there is a possibility, but the sequence of events is such that, generally speaking, as we know it now, in this 24 inches or so of front end collapse, the rate at which this happens even the force-time-distribution curve is not of significance.

Mr. RYAN: You still have not said anything about anything having been published on this type of depressive material—that is, material that would compress but would not spring back?

Mr. STONEX: We have material which compresses and which does not spring back. We have such materials in our conventional designs. If we take a conventional car and a car with the front end sheet metal bumper stripped off, we find that the conventional car absorbs energy at a slower rate; it stretches out the duration of the collision by something like 20 per cent; it always lags behind the stripped car in distributing energy, by an amount of something like 20 per cent

of the total energy. But, as I said, this is a matter of no importance at all, because the car stops before I collide with the instrument panel. We need better restraint systems.

Mr. RYAN: Would a compressive material between the fire panel and the motor block not be of some assistance in reducing the severity of injury?

Mr. STONEX: We have not seen, in all of the crash impacts we have run—which include 50-mile-an-hour barrier deaths and 60-mile-an-hour tree deaths—any indication that the motor block comes back into the passenger compartment to an extent which is dangerous or harmful.

Mr. RYAN: That is at lower speeds.

Mr. STONEX: Up to 65 miles an hour, with direct impact on a tree. We do not know many of these answers and we as I have said—and as I am sure are all of our colleagues—are working very diligently in this area. You may rest assured also, that whenever we find out something which can be useful we will adopt it immediately.

Mr. RYAN: I thought it was around 35 or 40 that we had trouble with the blocks coming back.

Mr. STONEX: Not to the best of my knowledge. Perhaps someone else knows of other experiences, but we do not have it in our research.

Mr. WHELAN: Mr. Chairman, can I ask a plain supplementary of the gentleman who has just spoken?

Do you mean metal that has flexibility is no better in an automobile than very stiff metal? Is there no safety factor in having metal that will compress against a really stiff metal?

Mr. STONEX: In the range of severity which I am discussing, which covers, say, the speed range of 25 miles an hour to 65 miles an hour, in solid impacts on barrier or a tree, the difference in detail of construction of the front end does not appear to be important.

I have heard it reported by some of my colleagues, who have done some early computer work, that existing cars with the conventional front end design are about 80 per cent of ideal in terms of the energy-absorption and the distribution of energy-absorption during the collision. I cannot verify this, but I have heard it reported.

Mr. WHELAN: I have one more question.

Can you explain why it is that a collapsible steering wheel, then, is of some utility?

Mr. STONEX: If I strike it during the last 8½ inches of travel forward, no energy is being absorbed over this considerable distance; without it, it is absorbed in whatever deformation I can do to the steering wheel rim. In essence, then, this lengthens the duration of the second collision by an appreciable amount.

The CHAIRMAN: I think Mr. Haeusler wants to say something.

Mr. HAEUSLER: Mr. Chairman, I think this is a very appropriate and searching line of questioning and the point is well taken that this energy-absorbing steering column does demonstrate the method of absorbing energy by a ve

effective substance—sheet metal. The major absorption is occurring in these instances in the accordioning of the jacket around the column, forming into accoridian pleats, as it were, and the bending of metal which does not spring back; and this bending is indeed accompanied by a very substantial amount of absorption.

An hon. MEMBER: This is the same compressive material?

Mr. HAEUSLER: This is excellent material, yes. We have done considerable work in this area, comparing organic materials—elastic and relatively rigid foams—with the sheet metal, and the sheet metal looks very competitive, very appropriate in terms of its effectiveness in absorbing energy.

I would like to add, by way of comment on another point raised, that we, too, have been looking at the cases brought to us by the Cornell Crash Injuries Research Program—actual highway accident cases—and find no basis for this apparent popular concern that the engine will come back into the lap of the front seat occupant, or something of this sort. This can, indeed, happen; it has happened; but the point is that in such instances as it does, this represents the utmost extremity of accident. This is why it makes such sensational press material. It is because it is quite exceptional, rather than being the manner in which so many of our people are being injured or killed.

The CHAIRMAN: Thank you very much, Mr. Haeusler.

I am now going to ask Mr. Yves Forest, the Member from Stanstead in Quebec, to take over as Chairman.

Our next questioner will be Mr. Grafftey from Brome-Missisquoi.

Mr. GRAFFTEY: Gentlemen, I will make my questions as brief as possible. I am afraid—with my apologies to my colleague, Mr. Honey—that perhaps a spokesman from each of the companies here will have to try to answer this.

Gentlemen, I will not, as did Mr. Kennedy in the U.S. hearings, ask you about the profits of your corporations, because I do not think that is what we are here for; but within reason—and I know it is a hard thing to measure—could you tell us what your budgets for safety research were in 1965, and what your budgeting for direct safety research in 1966?

While you are commenting on, or possibly giving us, these figures, could you tell me whether, in your view, and from your dialogue with other executives in the industry, it is now recognized that this year there has been a decline in vehicle sales and whether, in your opinion, you feel that this is because the public are now demanding more safety in cars, and that finally safety will sell?

These are the two questions that I would ask—whether or not you could give me your comparative figures for safety research in 1965 and 1966, and whether, in the view of the industry, the public's reaction shown in declining sales does mean that safety will finally sell?

Mr. LACY: Taking the last question first, I do not think that I am in a position to say why, if they are in a particular company, car sales are down, or why sales for the industry as a whole are down.

I think you will find very little agreement amongst economists on why the market in any commodity is up or down, or why the market as a whole—the stock market, for instance—is down. I read about it every week and I find such expressions as “tight money” and many other things. Tight money seems to be

the whipping boy for all market declines right now. It certainly has an effect in the sale of cars, because cars are bought in large measure on time payments, and if you cannot borrow money to buy an automobile it certainly will have a strong effect; and I would think that this has a far greater effect than any of the other considerations that you suggest.

Mr. GRAFFTEY: Perhaps I would better understand the pressure which you gentlemen have been operating under if you could file the information on expenditures with the Committee, if you feel that it would not take too much time. If you have it readily available now we would like to hear it. If not, this information on the relative budget expenditures for safety research in 1965 and 1966, could be filed with the Clerk of the Committee later on.

Mr. STONEX: Mr. Chairman, the amount of money which is budgeted or spent is really begging the question. You saw the facilities today at the proving grounds; and you saw a barrier impact test.

After you left I saw a memorandum to the effect that the test crew is 40 tests behind on one of the facilities and 20 on the other. It is not a matter of money, at all. It is a matter of trained people.

Today you saw probably two-thirds of the competent crash researchers in the whole wide world, and tomorrow you will see the other third. If we had spent ten times as much money on crash research we simply would not have the trained people to do the work. Therefore, this is beside the point, to a large extent.

Mr. GRAFFTEY: What I would like you to say, sir, in my cross-examination—and if you feel it is unjust I would like you to say so—is that I, as a layman, have had the feeling that although you people who are so sincere are very often doing a good job in terms of safety engineering, the job that you have to do on those proving grounds has been severely hampered and limited by the dictates of styling and that that has already overruled a great deal of the significance of what we saw going on there today. The stylists have already had their way and the marketing people have already had their way by the time the vehicle has been put in your hands for test on the proving grounds. That is why I want to know the figures for pure research, independent of styling or marketing considerations.

Mr. STONEX: I cannot give it to you, and I am sure that the estimate of \$19 million given to the Congressional Committee last summer is a value which was estimated by assuming certain developments in brakes for safety and certain developments for something else. These are intangible figures. I cannot even tell you how much of my salary ought to be budgeted for safety, if any, nor those of most of my colleagues. This is an indefinite and intangible figure.

Again I want to repeat that the people who are qualified to do this work number in the fifties in the whole world. We are training others as rapidly as possible, and I am sure our colleagues are—because this is the limitation—qualified people.

Mr. GRAFFTEY: Before I ask my next question, I would simply say that we will not get into a dialogue on figures now, but if figures can be filed with the Committee I think they would be very helpful.

I would like to ask a few questions of Mr. Haeusler of Chrysler Corporation, but before I do so, Mr. Haeusler, I would like to compliment you on being one of the executives in the industry who, in my view, have made a great effort in this respect.

Mr. HAEUSLER: Thank you, Mr. Grafftey.

Mr. GRAFFTEY: Mr. Haeusler, in your view, do you feel—and this is a very difficult field—that the motor vehicle industry, in general, in North America has over-emphasized power in the vehicles to the detriment of safety considerations?

Mr. HAEUSLER: No, I do not believe so, if by that you mean power in design, or consideration of power available in the designing or choosing of engines.

There may, indeed, be questions raised with regard to the manner in which advertising has presented this subject, and we are constantly sensitive to this subject, and appropriately so. We need to be. We are creating appeal with regard to "lively" cars. I think we have to be quite careful, and continue to be careful, that we are not suggesting irresponsible use of these cars.

We are well aware of the results of irresponsible use. We are well aware of the fact that a sharp knife can, indeed, cut, and we are not about to dull the knife. However, with regard to engineering choice, I do not think we have made any mistakes. It is not a question of one or the other. We have made the point repeatedly that higher power can, indeed, be used wisely and as a safety mark; it has also been used unwisely, we know.

Mr. GRAFFTEY: Mr. Haeusler, I am not going to put you "on the spot" and ask you any question different from the one I will ask the spokesman for G.M. and Ford today, but as a man who is deeply involved with safety engineering of vehicles have you often felt in the past that your recommendations to your company relating to safety engineering have been compromised, and at times nullified, by considerations of styling and marketing?

Mr. HAEUSLER: I am sure that to a degree they have, in the sense that all of these considerations are brought to bear in the final choice of product—a product which must be presented to and sold to the driving public.

I am sure that if safety were the only consideration the vehicle would, indeed, be different, and look different to some extent. There has, indeed, been a juggling together of these several considerations, with no one being the sole basis for determining what is to be sold. I think this is true.

Mr. GRAFFTEY: Can I, as a legislator—and I am not asking you to make public testimony at this time—assume that when you have dialogue with your superiors in advertising and marketing, men in your position would take serious objection to some of the industry's advertising over the past years, especially as relating to the names of the vehicles?

Mr. HAEUSLER: I have taken no personal exception to the choice of names, nor do I feel inclined to. I think that these are whimsical, at the very least. We have had no indication—not even a modest indication—that naming a car a Fury is or something else that results in less responsible use as contrasted with calling the car a somewhat more neutral name.

Mr. GRAFFTEY: Do you think that calling a car Fury, a Mustang or a Thunderbird inculcates safety in the public's mind?

Mr. HAEUSLER: I doubt very much that it has any effect, one way or the other. I do not really believe that it has had any measurable effect. This has been a discussion topic, I realize, and I realize we cannot prove it one way or the other. There has been no basis that has caused me any concern, frankly.

The VICE-CHAIRMAN: Mr. Whelan, on a supplementary.

Mr. WHELAN: What about the word "Imperial"?

Mr. HAEUSLER: Mr. Whelan, if I could make a whimsical remark, I do not think it is going to cause the downfall of the republic, anyway.

Mr. GRAFFTEY: I would like to continue the same line of questioning, very briefly, with you, Mr. Scott, and ask if, in your view, we have over-emphasized the powering of vehicles in terms of safety?

Mr. SCOTT: No; I agree with Mr. Haeusler. You can take a 1.3 engine in a Volkswagen and drive at 75 miles an hour and, upon hitting anything, I am quite sure that there is a fatal accident. Whether or not the engine reserve power North American size car is greater than 1.3, and so forth, is quite immaterial. It is the manner and the use.

This is a rather old saw. I spend an awful lot of time on the telephone talking to others in the United States, who call me up and ask me similar questions. You probably know Jeffrey O'Connell. He likes to call me, and he always asks me about the names of the cars. I have probably spent \$100 on the telephone with him, and he keeps asking the same questions; so that I am just not going to talk to him any more. I say essentially what Mr. Haeusler has said.

If a car is about to hit a tree, whether it is called a Lincoln or a Mustang you are in trouble. I do not care what the name of the car is.

I do not think we have over-powered the cars. We offer a variety of transportation, Mr. Grafftey. We cannot make a single car for everybody here any more than I can make one suit to fit all of you. It is expensive to design different types of cars. We do so because there is a public interest in different kinds of cars that do different things, at different prices, with different kinds of ride, with different levels of convenience and luxury, and we respond to that. The one equation that is a constant is our interest in providing the safest possible transportation for that size and shape of vehicle.

Mr. GRAFFTEY: Mr. Scott, would you give your title with your company to the Committee?

Mr. SCOTT: I am the Automotive Safety Director for the North American Car and Truck Group; that is a corporate position.

Mr. GRAFFTEY: Do you find, Mr. Scott, that very often your recommendations to senior management are nullified or compromised by styling and marketing considerations, to the extent that you feel frustrated?

Mr. SCOTT: I am delighted to have the opportunity to answer this question. The answer is no. I am a member of the Engineering and Product Planning Committee, which is advisory to Mr. Ford, on the approval of all product programs. I am also a member of the Styling Committee, which is advisory to Mr. Ford, on the approval of the appearance of all new model programs. I have been the Automotive Safety Director for a relatively short period of time. I have

had an interest in safety and have spoken for safety as a member of these committees. Before I was in this position I was the vice-chairman of the Product Planning Committee, and I have spoken for safety for years in this group. I have not had a whimsical reversal attitude among the members of the management of our company. I am delighted to say that the principals of our company are as interested as you in the furtherance of automotive safety.

I may further add—and Mr. Haeusler has said it well—that you do not make a car to satisfy one buying attribute alone. Cars are bought for different reasons. Some people want a car to commute; some people want a station wagon for trips, and so forth; and cars must satisfy different kinds of people who put different values at different points in time on different attributes. Some people want “ride”. We went through a period when people wanted power, and perhaps industry over-emphasized in its advertising of power back in the middle 1950’s. We went through rather interesting periods in appearance of vehicles, such as in the days of the fins, and so on.

Today, we find—and we are delighted to report—that the buying public both in Canada and in the United States—I am talking about our North American cars, now—is ascribing a higher value to safety, and we are responding to it. We pushed safety hard back in 1955; we introduced the Ford safety factors; we introduced steering wheels, seat belts, and so forth, and we had an awful lot of unsold seat belts around for quite a few years despite the fact that we sold them at cost.

We are delighted to find a different attitude now. We are capitalizing on that attitude. Therefore, when you ask, are we doing more today? Are cars safer today? Are people refusing to buy them? and so forth, I say that cars are safer today and are going to become even safer, because the public is willing to insist upon it; whereas in the past there was less interest.

Mr. GRAFFTEY: As a recognized expert, Mr. Scott, in your field of directing safety and safety engineering in the Ford Company, have you ever had occasion to register objections with your advertising people because at times, you have felt that they have done the contrary of inculcating safety in the public’s mind and helping you in the job you have to do?

Mr. SCOTT: I review all advertising; I pass on all advertising which in any way is associated with safety, or which in any way is associated with, I should say, a non-safety approach. There have been times—as just the other day—when I have asked the agency to change the copy on one of our advertisements. I thought it was taking some slight licence with the actual facts. They did so.

I find that I have no controversy with our marketing people. The agency, at times, which is a little more distant from our campus, so to speak, sometimes has not joined us in our thinking, but we are working well together.

Mr. GRAFFTEY: Just to complete this, Mr. Stonex, would you care to comment, on behalf of General Motors, on this same subject, sir, as the senior man here from General Motors on safety engineering and research?

First of all, sir, I would like you to comment on the question I asked of both Mr. Scott and Mr. Haeusler, whether you feel that we are emphasizing power at the expense of safety. Then I will ask you the same set of questions.

Mr. STONEX: I think not. If you look at the history of the mileage fatality rates, for example, from 1926, when we killed about 25 people per 100 million

miles with predominantly 20 horsepower model T's, down to the current period when we have in the United States a fatality rate of a little over 5, dancing back and forth, with the average horsepower much bigger than model T's, there must be something besides horsepower which has an effect on accidents.

I think that it is conceivable that our advertising over the past decade has possibly not been completely appealing to safety engineers, but I just cannot believe that it has had any bearing on the accident picture, or on the fatality rate.

Mr. GRAFFTEY: You do not believe that advertising has any bearing on the accident picture, or on the accident rate?

Mr. STONEX: I cannot find any evidence that it does.

Mr. GRAFFTEY: You do not feel that advertising can help to inculcate a spirit of safety in the driving public?

Mr. STONEX: I would hope that we could do it, but we have a long way to go yet.

Mr. GRAFFTEY: As my last question, Mr. Stonex, I would ask you: As a man who is the spokesman for your industry and who reports on safety engineering and safety research, do you often feel that many of your direct recommendations on safety engineering are compromised or nullified by marketing or styling considerations?

Mr. STONEX: I would like to put it this way, that the styling people are much more often embarrassed by me than am I by them.

Mr. GRAFFTEY: Which do you feel is given priority consideration in G.M.—styling, or safety engineering?

Mr. STONEX: I think we win about 90 per cent of the time, or more. We have an excellent relationship with our stylists. I believe my colleagues do, too, because I have heard these remarks. They recognize that it is perfectly possible, perhaps even easier, to make a safe car which is also very attractive styling-wise, and you will see this more and more as the 1968 and 1969 models become available.

Mr. GRAFFTEY: I am glad to hear you say this, Mr. Stonex, because for the last three years some of my strongest critics—and incidentally I have tried hard not to deal irresponsibly with the industry—say that they cannot build a safe and a stylish-looking car at the same time. I am very glad to hear you contradict that.

Mr. STONEX: You wait until you see our 1968 models!

Mr. GRAFFTEY: I am very very glad to hear you contradict them, sir.

Mr. STONEX: Thank you.

The VICE-CHAIRMAN: Are there any other of the company executives who wish to comment?

At this time I would like to introduce Mr. Bancroft of the Canadian Government Specifications Board, Department of Defence Production.

I now recognize Mr. Mather.

Mr. MATHER: Mr. Chairman, our Committee, as we know, is concerned with all aspects of highway traffic safety, and I have come to understand that the

three main elements involved in highway safety are (1), the driver; (2), the road; and (3), the vehicle. As we know, the driver has for many years been under the rule of law on where he can drive, when he can drive, or if he can drive. He must pass certain standards.

The same applies to the second ingredient in highway safety, that is, the road surface. It is signed, or it is zoned, and speed limits are established. It, too, is under the rule of law.

My question is: Is it not reasonable, and should it not be acceptable, that the third element in highway safety, that is, the vehicle, should also be brought under the rule of law, as are the other two main ingredients?

Mr. LACY: I have in the office a list of statutes of the provinces of Canada, which must be at least four to six inches thick so that I think we can say that it does fall under the rule of law in the same way as do the driver and the highway.

Mr. MATHER: Therefore, you have no objection to the extension of that rule by legislation?

Mr. LACY: No more than any of us, as free individuals, have any feeling about having ourselves limited, shall we say. Most of us like to have as much freedom as possible without being regulated by government, but where government regulation is necessary I would say that we are willing to put up with it.

Mr. MATHER: With that in mind, and considering the earlier discussion about the difficulties of pooling resources for safety research on an *ad hoc* basis in the industry, is it not, perhaps, a more realistic thing, as is now happening, that the government—the public, through its legislation—is beginning to establish broad standards of safety ingredients in automobiles? Does this not seem to be a more realistic way of getting joint action by the industry to meet these problems than leaving it on an *ad hoc* basis?

Mr. LACY: I am sorry, Mr. Mather, I lost track of the specific question you asked.

Mr. MATHER: I am sorry. I will try to simplify it. We have agreed that you do not object to the state's regulating standards?

Mr. LACEY: That is a rather general statement. I have already said that the state regulates motor vehicles. You ask: You have no objection to the extension of that? I can say that I, personally, am regulated by legislation. Forgetting about cars for the minute, if you ask: Do I have any objection to the state limiting my freedom of action further? I would have to say: "Up to a point". When it comes to legislation on motor vehicles I also have to say, "Up to a point". I do not know how far you want to go.

Mr. MATHER: You would accept that there are certain basic elements of safety, such as involved in driving, or road surface, that are logically controlled by the public through the state? I am sure you do not disagree with that.

Mr. LACY: I can say that they are already controlled by the state.

Mr. MATHER: You accept that?

Mr. LACEY: Yes.

Mr. MATHER: Do you also accept, then, the standards—

Mr. LACY: If you are asking how far do we extend it, my answer is that I do not know.

Mr. MATHER: As you have said earlier tonight, you would accept the new regulations which will be coming out, when you understand them, and if they are physically possible.

Mr. LACEY: Yes, I think so.

Mr. MATHER: With those points in mind, my last question is: Considering the difficulty that a competitive industry apparently has in pooling its resources for traffic safety on an individual, or *ad hoc* basis, is it not sensible, and more realistic, that the public should do something about establishing standards for all concerned?

Mr. LACY: What do you mean by "the public"?

Mr. MATHER: The public, through its representatives, the legislators.

Mr. LACY: I seem to have gone in a circle. We had established that, I thought. You asked if, similar to the federal highway and traffic act, we would have no objections to that. I would say that we would have no objections to an extrapolation of that into Canada.

Mr. MATHER: I think it is agreed, then, that, because it is difficult for the industry to co-operate individually on a private enterprise basis, to come up with joint research decisions for traffic safety, it is perhaps more realistic to bring this about by the public establishing it through legislation?

Mr. LACY: Of research facilities? Oh, I see; I thought you meant laws.

Mr. MATHER: The laws would establish the standards.

Mr. LACY: When you talk about establishing standards, that is not research. I do not consider those to be the same at all.

Mr. MATHER: Are you not doing research, as are Ford? Are you not doing research in this crash program, along the lines of determining conditions of the car ingredients because of the new standards which are evolving? We understood today that, whereas, a year or two ago, one or two cars were being crashed each month, now there are 80 or 90 being crashed, and we understood that this was being done in line with what is expected in the way of new tests of, or new standards of ingredients in, cars.

Mr. LACY: We have done crash research testing for years. It goes back to the mid-thirties; and G. M.'s go back earlier than that, I guess; but I missed the point on this public development of standards. By "the public" are you suggesting that the state subsidize a research facility?

Mr. MATHER: No. What I mean is that the state, through regulations and specifications for different car ingredients, automatically will establish a level and the industry will live up to that level?

Mr. LACY: I am afraid I cannot answer the question, Mr. Chairman; perhaps somebody else can.

The VICE-CHAIRMAN: Would anybody else like to comment?

Mr. LACY: I miss the point.

Mr. WOODCOCK: I might make one comment, that the industry has a co-operative group who do produce standards, the Society of Automotive Engineers, and many of the standards that are being adopted now stem from these same standards; and there is, in fact, a very good rapport in establishing these SAE standards. Therefore, to some extent, Mr. Mather, we are doing this.

I think it would be a little unreasonable, perhaps, to suggest that we embrace legislation without knowing what it means. I think you can be sure, though—and I speak for General Motors and, I am sure, for the industry—that we will fully co-operate with any government which is attempting to promote safety.

Mr. MATHER: Thank you, Mr. Chairman.

Mr. SCOTT: I would like to say something here. I, too, am confused by the question, but I want to say something which I believe relates to your question on whether we are interested in, or would resist, legislation, and so forth, and if we cannot co-operate should we have legislation.

Let me make a personal statement based upon my experience. I believe that your question is asked on the assumption that there is some magical thing that can be done if a law is passed.

Laws and legislation that will contribute to safety, reduce the death toll, minimize accidents and, in short, alleviate this enormous problem which civilization has, must be directed towards the source of the problem.

Why do we have accidents? Pass a law against accidents? No, I am being a little facetious. Should we pass a law that one should not drive at more than 20 miles an hour on highway 401? I do not think that would help safety, because people will not respect the law.

This industry, collectively, recently hired the services of probably the most reputable research organizations in North America, the Arthur D. Little Company. We said, "Here is a blank cheque. Research the literature. Find the correlations. Give us help. We need direction. What can be done to reduce this toll?" I must say that the industry was dismayed by the Little report, because it punctured the pre-conceived notions that many people have about why cars are unsafe, or why accidents happen, or why people are killed or injured.

Frankly, one of the few things in the Arthur D. Little report that proved to have correlation between an objective and a fact was that the white margin line did seem to reduce accidents when it was applied to the side of the road.

There was no correlation that was satisfactory between driver training and fewer accidents. I could go on and on and on. It was very dismaying.

I cite all that because you asked what was our attitude towards legislation? Our attitude is we want to find a solution to the problem. There is no simple answer to it.

Perhaps the legislation should deal with the licensing of bars; or perhaps there should be a mental as well as physical test of drivers. We are not maliciously designing vehicles which will be unsafe. You do not have to pass a law to say to us, "Put your heart in the right place." We are doing everything we know, yet we as a group beg everywhere—give us help; give us answers; conduct studies.

I come back to this question of industry co-operation, as a group. Just recently we gave \$10 million to the University of Michigan and asked them to inaugurate an institute for traffic safety research, and said, "We need help". All the companies donate generous sums to respectable institutions—Cornell, U.C.L.A. and so forth—in the search for this information.

I am concerned about the manner in which you phrased the question, in that there was presumption in it that one knows what to do. If the problem were as simple as that, we would have done it. We would have done it in 1925 when the death rate was five times higher than it is now. Foreign countries, which have death rates five to ten times higher than we and you have, would have done it some time ago.

The problem is multi-faceted. It is not simple, and we are not refraining. We are not like the people who could, but do not, put out a battery that will last forever, which is one of the stories that one hears. We make money by selling transportation. We make money only by selling transportation to people who are alive to buy it. We have a personal, selfish motive, let alone a humanitarian attitude, in this. It is a grievous situation. There is probably no one in this room whose life has not been touched by someone having been in a serious accident, or perhaps having been killed. This is not a frivolous matter.

We are not refraining from taking actions which we think will help, and I implore you to understand that and to remember it, when you ask why we should not have legislation if we cannot co-operate. My answer to that is slightly different, perhaps, from that of one of my colleagues. I say that we want facts which can serve as a basis for taking action. I do not think that simply passing legislation, without these facts at hand, is a route to the solution of the problem.

I am very concerned that in the United States, where we now have a Traffic Safety Act, there will be a great letdown in people's minds if—and I am sure that this will happen—the death toll in 1966 is higher than it was in 1965.

Mr. GRAFFTEY: May I ask a supplementary on that, Mr. Scott?

I think that Mr. Lacy might agree with me here. We were absolutely frustrated at the meetings we held in camera in Canada. We would get to a certain point where we were talking about the microbe, or the agent, or the atmosphere in this senseless epidemic, and we were frustrated because we did not know why people were getting into accidents and what was killing or injuring them once they got into accidents. From what you say, you have had people to do your research for you—

Mr. SCOTT: In addition to our research.

Mr. GRAFFTEY: Yes; excuse me; in addition to your research.

I must second your remarks. I think your statement was excellent. However does it not bear out the opinion of many people, and that we are going to have to spend millions and millions and millions of more public and private research dollars before we beat this epidemic? We had to do it with polio; we have had to do it with every epidemic in history. It seems to me that we are not spending any public research dollars. If you do not mind my saying so—

Mr. TOLMIE: Mr. Chairman, on a point of order.

The VICE-CHAIRMAN: Yes, Mr. Tolmie.

Mr. TOLMIE: This meeting is no dialogue between Mr. Grafftey and Mr. Scott.

The VICE-CHAIRMAN: I had expected just a short supplementary, and I hope it will be, because we have a long list of questioners and time is getting on.

Mr. GRAFFTEY: What is your specific point of order?

Mr. TOLMIE: My specific point of order is that we have only another 15 or 20 minutes and the rest of the members should have a chance to ask their questions.

The VICE-CHAIRMAN: Are you finished, Mr. Mather?

Mr. MATHER: I just want to be sure that my assumption is correct, that the companies, although they do not, perhaps, welcome legislation, will certainly abide by it when they get it.

Mr. SCOTT: Most assuredly.

Mr. MATHER: Thank you.

The VICE-CHAIRMAN: Are you through, Mr. Mather?

Mr. MATHER: Yes, sir.

The VICE-CHAIRMAN: Mr. Tolmie.

Mr. TOLMIE: Mr. Chairman, Mr. Scott has given us a very vivid account of traffic safety, and he stated that he has to have facts on which to act in order to achieve a better traffic safety program.

I think the question of the recall of half a million automobiles has been treated much too lightly. I, personally have—and I know the public has also—been profoundly affected by this matter. The evidence tonight was that it has been grossly exaggerated, and that not too many automobiles were recalled for safety reasons. The fact still remains that a very substantial number of autos were recalled for safety reasons.

My position is simply this. I feel that the automobile is a consumer product, and, as such, the public has to be protected. I would suggest that perhaps a new concept should be introduced if the automobile industry is really interested in traffic safety. Has not the time now arrived when federal safety inspectors should actually be in the plants to inspect the automobiles on the spot before they are distributed to the consumer? This is done in food plants and in other types of plants. I think perhaps the time has come when this concept should be considered. I would like you to comment on that.

Mr. WOODCOCK: I think that we would accept help from any source; but we do have, in all of our plants, well-trained, well-staffed inspection and quality control people who are doing this on a constant, year-by-year, week-by-week, day-by-day, basis. One or 20 more government inspectors in plants simply are not, in my opinion, going to have any effect on the problems.

Actually, the number of defects which do go out, granted that in some contexts they may seem high, in the overall picture are, indeed, very low. I think the workmanship is on a very high level in our plants.

I doubt that this would be an answer to the problem, but perhaps one of my colleagues might like to say something further.

Mr. SCOTT: I would like to speak briefly to just one point.

We are a mass-production industry. In most of our plants an automobile rolls off the line every 30 seconds. Now, we have worked for about 2½ years to make that happen, and the general theory—which you can see does not always work—is that one designs a car; one tests the car; one tests it to exhaustion; redesigns the weak areas and evaluates the car from all attributes; signs off; final tools are made and then you just make 2 million perfect cars. This is why cars do not cost \$10,000 to \$15,000; it is because we make them on mass-production.

I do not think that government inspectors would aid the problem. I wish to give you an example. In one plant in which we make the Lincoln we have the most exhaustive quality controls, computer-assisted controls, which I believe, match, if not surpass those of any plants in the industry. In addition to that, we subject each Lincoln car to a road test. The road test is 12 miles long. It is conducted by a trained and experienced man who does nothing but drive these cars around a 12-mile loop. He conducts something like 150 inspection-type checks—turn indicator to the left, turn indicator to the right; he listens for this, he listens for that; he observes this and he observes that—and, despite this, we have defects.

I wish to cite one to you. We recalled Lincolns last year because of boiling brake fluid. This did not reveal itself in our exhaustive testing. The reason for that is that our drivers do not drive with their foot dragging on the brake. The problem we had was that apparently too many people who drive Lincolns drag the brake and they, in effect, were driving with the brake on most of the time. Therefore, we recalled 9,000 Lincolns, and had this been made public last year you would have been aghast. It would have been said, "9,000 Lincolns recalled for brake defects". Yet the answer would be that we called them in to put in a different brake fluid which would withstand what I must call driver-abuse.

These are the types of things which happen. There are 15,000 pieces in each of these cars and in these circumstances, in mass-production which is vital to bringing cars and transportation to people at reasonable prices, these things are going to occur from time to time. We are proud of the fact that we subject ourselves to public criticism by publicizing, or by being forced to publicize now that we do follow our vehicles to make sure that they are all right.

Mr. TOLMIE: Mr. Chairman, I do not want to interrupt the witness, but could I just ask him one question?

You apparently assume that the automobile industry is the only one that mass-produces a product. Other industries are subjected to inspection on the federal level. It is a consumer product. Why do you feel that your industry should be the exception?

Mr. SCOTT: I do not request that it be an exception. I would suggest that one examine it from a practical view point. I truly and sincerely do not believe that the adding of 100 federal inspectors to our plants would in any way improve our performance. We have an objective of zero defects.

Mr. TOLMIE: Would you like to have withdrawn from food plants the food inspectors who are presently examining food?

Mr. SCOTT: I am not too well-acquainted with what the F.D.A. does.

Mr. TOLMIE: Yes or no—would you, or would you not?

Mr. SCOTT: I do not know. I do not know what they do.

Mr. TOLMIE: If you do not know what they do—

Mr. SCOTT: If they sample the jello out of every batch—

Mr. TOLMIE: In other words, you do not know.

Mr. SCOTT: I do not know what they do.

Mr. LACY: Mr. Tolmie, you asked for a comment. I would concur completely. In my opinion it would resolve nothing. If you are determined to have federal inspectors in plants I do not think we could fight it, but I agree that it would do nothing to help the approximately 50,000 people who get killed every year.

Mr. SCOTT: I wish to bring the realities of this situation to you because I do not feel that you are with us in this view.

Mr. TOLMIE: No; exactly. That is the whole purpose of the question. If I was, I would not be asking the question.

Mr. SCOTT: Just yesterday I released a recall campaign because of the power brake booster assembly in the 1967 Thunderbird. There are something like 267 units which are going to be recalled. I wish to tell you why they are being recalled. The vendor who manufactures this cylindrical piece of metal reported that the metal thickness on these 267 power brake booster assemblies was below our tolerance level. We do not check this level because we cannot put a micro on it. It is a solid cylinder and it is closed at both ends.

They rip open and test periodic batch samplings and they found a batch that was substandard under our specifications. One cannot tell this by looking at it. A federal inspector is of no value because he cannot look at this and say, "This is 40 thousandths instead of 50 thousandths."

We are recalling these because over a period of, I will say, a year's usage, or 10,000 miles or so, there is an opportunity—a possibility—that metal fatigue could cause some leakage which would cause progressive deterioration of the brakes. There is no risk or danger to life and limb; we recalled these units because we found this specification aberration. The inspectors cannot find that kind of a thing.

Mr. TOLMIE: Mr. Chairman, I do not want to pursue this any longer because the other members want to ask questions. Your position is clear to me, then, that although federal inspectors are utilized in many plants producing consumer goods, you do not feel that they should be utilized in the automobile industry.

The VICE-CHAIRMAN: Are you through, Mr. Tolmie?

Mr. SCOTT: Yes, that is correct.

Mr. GOYER: Mr. Chairman, I would like to direct my questions to the officers of General Motors. These are the same questions that I asked this afternoon of the officers of the Ford Company.

Does General Motors consider the Canadian market important enough to accept certain specific Canadian standards?

Mr. WOODCOCK: I think so, if someone could prove to us that a Canadian standard was, indeed, essential.

As a matter of fact we do make some modifications in our vehicles re heaters, sometimes the carburation, and sometimes "ride" control. If someone could convince us that there was, indeed, a need for a specific Canadian standard I think we would abide by this in the area of safety.

I cannot, at this time, see that the difference between the two countries is such as to warrant these, but we are of an open mind. There is nothing closed about our minds. If the need can be shown I think we would certainly listen.

(Translation)

Mr. GOYER: A second question, Mr. Chairman, We were informed this afternoon that General Motors had four research centres throughout the United States, that Ford Company had, I believe, three or four throughout the United States. Chrysler Corporation did not tell us how many such facilities they have.

Since these companies have various research centres, and not just one I wonder whether one or all these companies would consent to having at least one such research facility in Canada?

(English)

Mr. LACY: Chrysler is not quite as affluent as the others. We do not have four and three. We have two. They have been established in the United States.

I think we have to look at the mathematics of the situation. We now have a North American industry, essentially.

One of the proving grounds is in Arizona, because that is where we do our hot testing. I guess we do not have any place in Canada where we can do our high temperature testing.

An hon. MEMBER: We can.

Mr. LACY: I am afraid it would not be prolonged enough. You certainly have the mountains. We certainly will do our cold testing, and I can tell you where we are going to do that, starting December 1. All through the winter, with the exception of the Christmas and New Year's holiday, it will be in White River, Ontario. It is in White River for obvious reasons. It is one of the coldest places in North America. We do not have a large establishment, but we do a lot of cold testing, particularly, in Canada.

Mr. GOYER: May I have any comments from the Ford Company's officers?

Mr. SCOTT: Ford does cold-testing in Canada. We actually operate our headquarters in Bemidji, but frequently we do not have cold enough weather, so that we frequently have our convoys in Canada. We do not do it on privately owned property in Canada. We graciously appreciate the use of your very fine and challenging highways in that area.

Mr. PUGH: You are using, but you are not paying.

The VICE-CHAIRMAN: Are you finished, Mr. Goyer?

Mr. GOYER: Yes, sir.

The VICE-CHAIRMAN (Mr. Forest): I now recognize Mr. Honey.

Mr. HONEY: Thank you, Mr. Chairman, I would like to go back for a moment to the matter of recalls this year, which has been referred to previously by Mr. Aiken and Mr. Tolmie.

It is my understanding that the Traffic Safety Act is new legislation; that this is the first year in which it is applicable to the automobile manufacturers; and that, under the provisions of this legislation, notification of recalls is required to be made by registered mail to the owners. I also understand that previously, before the legislation, it was done through the distribution or dealer set-up.

I feel that we perhaps have not pursued this matter as far as we should, and I wonder, Mr. Chairman, if it is reasonable—and I think it is reasonable—to ask the manufacturers represented here tonight to file with the Clerk of the Committee the number of recalls over, say, the past five years in Canada and the United States, including this year to date, and the four years previous. Could this be undertaken?

Mr. WOODCOCK: First, I would like to say that we, in Canada, have followed the U.S. procedure, and do now, and will in future, notify owners by registered mail.

If there is a request of the industry to do as they are doing in the U.S. and to provide this information—although I am not authorized to speak for the company on this basis—I think it would be a reasonable thing to ask to be done. I would hope, though, that in Canada some discretion might be shown when these were made public so that alarmist tactics will not be used. I think this really is the term that must apply, because the recent announcement in the United States caused alarm. That was far out of proportion to the facts of the recall.

The VICE-CHAIRMAN: Does anyone else wish to comment on this?

Mr. SCOTT: May I ask a question of the questioner?

The VICE-CHAIRMAN: Yes.

Mr. SCOTT: What contribution towards reduced accidents and improved safety to you think will result from the companies' furnishing the Committee records of recalls which were made in, 1963, 1964, 1965, 1966, and 1967?

Mr. HONEY: Mr. Chairman, I do not think that is really a relevant question. I only want to say that as I perceive the responsibilities of this Committee, representing, as we do, the public, this is knowledge that should be within the ambit of the public, in Canada particularly.

I am sure that the Committee has no authority to extend, or to really force, a request to the American companies, but you are represented through your Canadian companies in Canada. My particular thought, if the American companies were agreeable to this, is to compare as far as the American statistics are concerned, with the new legislation in the United States, to see how they compare with the four previous years. I think this would be information which could be helpful in the deliberations and recommendations of this Committee, and quite possibly this Committee may recommend to the House of Commons legislation comparable to the new Traffic Safety Act in the United States.

Mr. RAHAM: As far as our company is concerned, presently we have no recall programs in action concerning 1967 vehicles, but should you desire to have information on recalls made during previous years, if a formal letter requesting this were submitted to our company we could provide the information.

Mr. HONEY: With respect, I really do not think a formal letter should be required. This is a parliamentary Committee and, with the greatest of respect, I merely ask the representatives here whether they will or will not do it.

The VICE-CHAIRMAN: Do you wish to make a motion to ask the companies to file this information?

Mr. HONEY: I think, perhaps, if they could reply, it would be helpful.

Mr. ROY P. O'CALLAGHAN (*Technical Manager, Kaiser Jeep of Canada Limited*): I would just like to be clear in my mind that we are talking about recalls for safety defects. Am I correct that that is what has been asked for?

Mr. HONEY: I am afraid I am not qualified really to distinguish between safety defects and others; I would be content to leave that to the interpretation of the motor vehicle manufacturers. Really, our only concern is with safety.

Mr. LACY: I would like to question, sir, two possibilities. I think you indicated, sir, that you wanted to compare the relative numbers this year with past years. I would suggest that two things can happen. Either they are more, or they are fewer. Could I, perhaps, just ask what conclusions you would draw if they were more, and what conclusions you would draw if they were fewer?

Mr. HONEY: One might be entitled to draw a conclusion, with reference to the American statistics, if they were more that the legislation now effective is helpful to the public in requiring the disclosure of call-backs and of defects.

Mr. LACY: Or would you conclude that the cars were worse now than they were?

Mr. HONEY: No; I would not make that conclusion at all.

Mr. LACY: Supposing there were fewer, what would you conclude?

Mr. HONEY: I think we are talking really about probabilities. My question is the very simple one, whether you will supply this information or not. It is our responsibility, as legislators, to draw our own conclusions.

Mr. AIKEN: Mr. Chairman, on a point of order. We are a Committee of the House of Commons and we have no jurisdiction whatsoever over the United States companies and they should, therefore, be eliminated, unless they wish to file the returns in question.

There is no question that in the case of the Canadian companies we are entitled to ask them for this information and to get it, and I do not think a letter is required; but I do think that we should leave to the discretion of the companies the type of material they wish to provide to answer the questions which we are interested. I think we are hedging around something. There is no difficulty. We do not ask the American companies for any returns.

Mr. HONEY: Mr. Chairman, on a point of order. I prefaced my request with the statement that I quite appreciated as my colleague, Mr. Aiken, has said, that we have no power to require the American companies to file this information. I prefaced my remarks with that statement. I, however, felt it would be helpful and I leave the request before the American companies. If they do not want to comply, this is fine; but as Mr. Aiken has said, with respect to the Canadian companies, I think that we are entitled to the information, and I would hope that it would be forthcoming.

Mr. PUGH: Just speaking on the point of order, Mr. Chairman, I was wondering whether any recall was made in the United States on the same type of cars as used in Canada—any recall by any of the companies in the United States, which was not recalled in Canada. In other words, if there are a recall in the United States was there automatically a recall in Canada?

Mr. LACY: Not necessarily so.

The VICE-CHAIRMAN: Mr. Honey, do I understand correctly that you are simply making a motion asking the Canadian subsidiaries to file the information, if they wish?

Mr. HONEY: Mr. Chairman, let me put it clearly, that I am requesting, if the Committee concurs, that the Canadian companies file the information. This is not within the discretion of the Canadian companies. If this Committee asks for the information we are entitled to it, and it will have to be filed. With respect to the American statistics, I merely ask the American companies to consider filing it.

The VICE-CHAIRMAN: Are you making a motion to that effect?

Mr. HONEY: Yes, I would like to make that motion, Mr. Chairman.

The VICE-CHAIRMAN: Who will second it?

Mr. MATHER: I will second it.

The VICE-CHAIRMAN: Is everybody in favour of the motion?

Mr. ADDISON: Mr. Chairman, if I may speak on the motion, have the companies reconsidered their positions and are they now prepared to file the information before the motion goes in?

The VICE-CHAIRMAN: Will you re-state the motion, Mr. Honey, exactly as you wish it?

Mr. HONEY: That with respect to recalls of automobiles manufactured by the companies here represented this evening, and with respect to the American statistics, we respectfully request the American companies to file the information with us for the last five years, including 1966, and the four previous years; and with respect to the Canadian companies that this information be filed as soon as conveniently possible.

The VICE-CHAIRMAN: Are there any comments on the motion?

Mr. ADDISON: Speaking on the motion, I was just wondering whether the representatives of the manufacturers could, perhaps, do this on a voluntary basis before the motion was put, or would you like to discuss it?

Mr. LACY: I know that similar information has been supplied to the United States government, but it does not go back five years. I think you would be causing a little bit of an extra problem to any company which had to go back beyond the data that are already on record. I believe they went back three years.

I might suggest such a modification just for simplicity of gathering statistics.

Mr. HONEY: I would like to say, with respect to the American statistics, that we will appreciate whatever you can file, if you decide to file it. It will be helpful to us.

With respect to the Canadian statistics, I feel that we should go back five years, and I feel, with respect, that the Canadian companies should supply this information.

The VICE-CHAIRMAN: Are there any other comments on the motion?

Mr. GRAFFTEY: I have one comment on the motion. I certainly support the motion so ably put forward by my colleague, but I hope that it does indicate to the industry and to us, as legislators, and, I think it would be only fair to say, to the industry in the Canadian situation, that we start moving in Canada to adopt the type of federal regulations regarding recalls that they have in the United States, so that every year we will not have to pass a similar motion, or have to make a similar informal request of the industry for the filing of call-backs.

I would suggest to the industry that we all recommend as quickly as possible to Mr. Drury, or whoever will put this through, that we have similar legislation in Canada, so that we will not have to pass this kind of motion annually. I support it.

Mr. Lacy can correct me if I am wrong here, but I gather that under the United States federal initiative there are strict regulations now about filing call-back information with the federal authorities, and we do not have it in Canada today. I do not think it is fair to the industry or to us, as legislators, that we have to appear every year and ask for this information.

The VICE-CHAIRMAN: Are there any other comments on the motion?

Mr. LACY: There was a supplementary question that came just prior to this motion. I gave a quick answer and the answer stands, but I want to explain it. May I do that now?

The VICE-CHAIRMAN: Go ahead.

Mr. LACY: The question was: Does a campaign in the United States automatically follow in Canada, and I said no. Unfortunately, I had my mind on one thing and you had your mind on another.

There may be a campaign in the United States for, let us say, a defective wheel and we will not have that same campaign in Canada because we get our wheels from a different vendor and the problem does not exist; so that the campaign would not take place in Canada. However, if the problem exists in Canada and they have the campaign in the United States, we will certainly have a campaign in Canada.

The VICE-CHAIRMAN: Before putting the question I will ask the Clerk to read it.

The CLERK OF THE COMMITTEE: Moved by Mr. Honey, seconded by Mr. Mather, that, with respect to recalls of cars, the United States companies be requested to supply those for the last five years, 1963, 1964, 1965, 1966, and 1967 and that the Canadian companies file this information as soon as possible.

The VICE-CHAIRMAN: Is that your motion, Mr. Honey?

Mr. HONEY: I would just like to say this—and I do not know if you need to add it to the motion—that I want it understood, as I have already said, that with respect to the American companies we will appreciate whatever they can give us. We are not suggesting the wording of "five years" with respect to the American companies, but it is a part of the motion with respect to the Canadian companies.

Mr. GRAFFTEY: Mr. Chairman, before you put the motion, as a spokesman for the M.V.A., Mr. Lacy, would you answer my question about whether we do not, as of now, have federal regulations in Canada?

An hon. MEMBER: That is not part of the motion.

The VICE-CHAIRMAN: You may ask your questions afterwards.

The question on the motion. All those in favour, please signify in the usual manner.

Those against?

Motion carried unanimously.

Mr. GRAFFTEY: Mr. Lacy, do we have regulations in Canada regarding the filing of information with the federal authority on recalls such as now exists in the United States?

Mr. LACY: I find it unusual speaking to a legislator about what legislation we have on the books. I am not aware of any legislation that makes it mandatory.

The VICE-CHAIRMAN: Mr. Honey, have you finished?

Mr. HONEY: Yes, thank you, Mr. Chairman.

The VICE-CHAIRMAN: Before proceeding further tonight, I would like to remind the Committee that we are sitting here in the same place tomorrow at 1.45.

I am in the hands of the Committee. Do you wish to continue? We do not want to impose on our expert witnesses. Some of them, I suppose, may come tomorrow.

Mr. WAHN: What names do you still have on your list, Mr. Chairman.

The VICE-CHAIRMAN: I have four names.

Mr. WAHN: Who are they, Mr. Chairman?

The VICE-CHAIRMAN: Mr. Wahn, Mr. Whelan, Mr. Guay and Mr. Latulippe.

Mr. WHELAN: Let them ask questions before anybody else breaks in with any line of questioning. Do you not think that would be proper?

The VICE-CHAIRMAN: Do you wish to continue?

Mr. WHELAN: If we are going to continue we should continue in that order.

The VICE-CHAIRMAN: As long as our distinguished guests have no objections we can continue.

Mr. RYAN: Mr. Chairman, could you find out if some of them will be unable to be present tomorrow?

The VICE-CHAIRMAN: Can at least one representative of each company be here tomorrow? Mr. Raham, will you be here from American Motors? How about the Ford Company?

Mr. SCOTT: What time will you be meeting?

The VICE-CHAIRMAN: One forty-five p.m. That is one representative from Ford, and at least one from General Motors.

Do you wish to adjourn, or do you wish to continue? Do you move to adjourn?

Some hon. MEMBERS: Agreed.

The VICE-CHAIRMAN: The meeting is adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 21

THURSDAY, DECEMBER 1, 1966

Respecting the subject-matter of

Bill C-26, An Act to Amend the Criminal Code (Safety
Devices for Automotive Vehicles)

Bill C-49, An Act to Amend the Criminal Code (Dangerous
Motor Vehicles)

and

Notices of Motion Nos. 26, 31, and 38

WITNESSES:

From American Motors Corporation: Mr. K. B. Raham, Chief Product Engineer; and Mr. W. S. Berry, Director, Technical Staff. *From Chrysler Corporation Ltd:* Mr. G. A. Lacy, Chief Engineer and Director of Product Engineering; and Mr. R. C. Haeusler, Automotive Safety Engineer. *From Ford Motor Company:* Mr. Carl Purdy, Product Engineer, and Mr. C. R. Briggs, Director of Safety Research. *From Kaiser Jeep of Canada Ltd.:* Mr. Roy P. O'Callaghan, Technical Manager. *From General Motors Corporation:* Mr. W. A. Woodcock, Chief Engineer; and Mr. K. A. Stonex, Executive Engineer, Automotive Safety Engineering. *From the Goodyear Tire and Rubber Company:* Mr. C. R. McMillan, Superintendent, Development Division.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,

Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, December 1, 1966.
(25)

The Standing Committee on Justice and Legal Affairs met this day at 2.45 p.m., in the Ambassador Auditorium of the University of Windsor. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Addison, Aiken, Cantin, Cameron (*High Park*), Forest, Grafftey, Goyer, Guay, Honey, Latulippe, Mather, Ryan, Tolmie, Wahn, Whelan (15).

In attendance: *From American Motors Corporation:* Mr. K. B. Raham, Chief Product Engineer; and Mr. W. S. Berry, Director, Technical Staff.

From Chrysler Corporation Ltd.: Mr. G. A. Lacy, Chief Engineer and Director of Product Engineering; and Mr. R. C. Haeusler, Automotive Safety Engineer.

From Ford Motor Company: Mr. Carl Purdy, Product Engineer; and Mr. C. R. Briggs, Director of Safety Research.

From Kaiser Jeep of Canada Ltd.: Mr. Roy P. O'Callaghan, Technical Manager.

From General Motors Corporation: Mr. W. A. Woodcock, Chief Engineer; and Mr. K. A. Stonex, Executive Engineer, Automotive Safety Engineering.

From the Goodyear Tire and Rubber Company: Mr. Ralph McMillan, Superintendent, Development Division.

The Chairman introduced the witnesses, and thanked Chrysler for the valuable tour in the morning.

The Chairman then opened the meeting to questioning by the Committee.

At 3.10 p.m., the Chairman invited Mr. Forest, the Vice-Chairman to assume the Chair.

On a question by Mr. Addison, Mr. Raham pointed out that Mr. Ralph McMillan of Goodyear Tire and Rubber Company was present and would perhaps like to give an answer. The Vice-Chairman then invited Mr. McMillan to address the Committee.

On motion by Mr. Mather, seconded by Mr. Wahn,

Resolved,—That the 1966 S.A.E. (Society of Automotive Engineers) Handbook be made an exhibit (see exhibit 20).

The Vice-Chairman thanked Dr. Leddy, President of the University of Windsor for his kindness and co-operation in permitting the Committee to use

the University facilities, and extended thanks to the witnesses, for taking the time to appear before the Committee.

At 4.10 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, December 1, 1966.
Windsor, Ontario.

The CHAIRMAN: Gentlemen, we have a quorum. I call the meeting to order. Because we were so busily engaged this morning and are somewhat behind time, I am not going to delay by making any lengthy remarks at this stage. I would simply like to say that our witnesses—I think we have met most of them already—will be Mr. W. A. Woodcock from General Motors, their chief engineer; Mr. Purdy from the Ford Motor Company, Vehicle Resident Engineer, and he is here in place of Mr. Scott; Mr. K. B. Raham, Chief Product Engineer of American Motors is here beside me; Mr. Berry, I believe, is right behind him and from Chrysler we have Mr. Lacy, Chief Engineer and Director of Product Engineering. I see that Mr. Haeusler is behind him. He will probably be asked some of the questions. Also in attendance is Mr. R. O'Callaghan, Technical Manager of Kaiser Jeep. It was agreed last night that we were going to continue the questioning by calling on those who had questions to ask but did not have an opportunity to put them forward. Mr. Wahn will be first.

Mr. WAHN: Mr. Chairman, my questions will be directed toward a single point, namely, what is the best method of creating a continuing incentive on the part of the manufacturers to produce cars which will be safer and which will give the maximum protection to people when accidents do occur? Personally I think the Canadian automotive industry is doing a good job in producing high quality cars. I know I am always pleasantly surprised when I get in my car and it starts up without too much trouble and I very seldom have much trouble with it. But I think all of us can agree it is in the interests of the automotive manufacturers themselves, and certainly of the legislators and of the general public, that there should be the strongest possible continuing incentive on the part of manufacturers to improve the product and make it safer all the time. Now, I have been impressed during the last two days with the thought that the safety program seems to have accelerated greatly within the last year or so. One of the companies told us that a few years ago they were running one crash test a month. Now they are running two crash tests a day, and they expect to increase that to three crash tests a day. Now, if my arithmetic is correct that means they are doing 90 times as much crash testing now as they did a few years ago. I realize that competition between the companies will tend to develop improved safety devices but I would ask the witnesses if it is not true that in addition to competition, public action is also desirable in order to create the maximum incentive in developing safety programs?

Mr. G. A. LACY (*Chief Engineer and Director of Product Engineering, Chrysler Corporation Limited*): I think, Mr. Wahn, the broad scope of highway

and traffic safety will definitely demand a large measure of public action. But I think you are confining yourself to the motor vehicle portion of highway and traffic safety. I do not think we like to dissociate the broad problems of the driver and the atmosphere in which the driver and the vehicle finds itself on the highway and the vehicle. It is a system. So, I do agree there should be a large measure of public and individual effort directed toward highway safety. In the final analysis, perhaps the best thing that can happen to protect oneself on the highway is to be individually courteous and careful. This is the one most important thing.

Referring to a point you mentioned, it is your opinion that vehicle developments toward safety have accelerated in the past few years. We would certainly agree to this. It has, and I think it will accelerate even more. We respond to public pressure, public demand, for safety in cars as we would respond to almost any other requirement on the part of the customer, over and above the desire on our own part to incorporate the best we have in safety features.

Mr. WAHN: Would it not be fair to say, though, that in your considered opinion the safety programs of the manufacturers have been expedited as a result of legislation in the United States?

Mr. LACY: I think that is a fair statement.

Mr. WAHN: It is often said that safety features do not sell well. We have been told, for example, that relatively few people wear safety belts even though they are provided by the manufacturers. This would indicate that the individual members of the public are not yet sold on safety devices. Probably styling and power are more important in selling automobiles than safety. Would that be a fair statement?

Mr. LACY: I think this is definitely an area where we can have some public response in selling and advertising the fact that participation of the driver is absolutely required and that he will only benefit himself if he will co-operate and use the equipment that is provided in it. I think we do need an extensive advertising program to this end, not necessarily on the part of the manufacturers but on the part of safety organizations, governments at all levels, schools and various institutions of all sorts, to persuade individuals themselves to please take care of themselves, use the equipment that is now available to them.

Mr. WAHN: This is my final question, Mr. Chairman. One of the bills before this committee is a bill which provides, in effect that it is an offence under our Criminal Code for a manufacturer to produce or for an importer to import a motor vehicle which is not reasonably safe for use on the highways, bearing in mind the conditions under which it is likely to be used. Do you have any strong objection to this type of legislation?

Mr. LACY: My own feeling, Mr. Wahn, is that that particular wording of the legislation is a very subjective one and I think it would be most difficult for either the manufacturer to interpret or the judiciary to interpret. I think we would much prefer legislation in terms of objective principles, and that you will say, "You will meet these specific objectives", and then we know what you are talking about and the judge knows what you are talking about. I think if I could refer to the recent Highway and Traffic Safety Act in the United States, they have specifically said that they should be stated in objective terms.

Mr. WAHN: Thank you, Mr. Chairman, that is all.

The CHAIRMAN: Did you wish to add to that, Mr. Berry?

Mr. W. S. BERRY (*Director, Technical Staff, American Motors Corporation*): Thank you Mr. Chairman. I would certainly concur with Mr. Lacy's remarks. In your visits in the last few days to the other companies you have seen the amount of testing that has been going on, and while our test facilities were not shown—American Motors proving grounds are in Wisconsin—this testing is, of course, going on in all the companies and it gathers a certain amount of momentum so that you inevitably create a continued atmosphere of interest in safety. As new models are produced they have to meet the safety standards, and certain tests, including barrier crash tests, are run. So, you inevitably add to your total sum of knowledge in the area of safety and what can be done in that field. Thank you, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Berry. Would anybody else like to comment on Mr. Wahn's questions? Mr. Woodcock?

Mr. W. A. WOODCOCK (*Chief Engineer, General Motors Corporation*): Just briefly, Mr. Chairman. We are concerned with public awareness of the importance of safety and the importance of safe driving and using safety equipment and I think the meetings here of this committee and our joint talks are important steps in this direction. I think public awareness is the most important thing.

The CHAIRMAN: It is certainly one of the keys.

Mr. WOODCOCK: Certainly, sir.

The CHAIRMAN: Mr. Whelan is the next on my list.

Mr. WHELAN: Mr. Chairman, I want to say first of all that the few days have been very interesting to me. I would also like to put on the record that I am familiar with the desirability of safety, having been associated with a casualty insurance company for some time and then being a director of that company and having gone through many safety programs of studying and being briefed. I wonder if any of the auto manufacturers represented here today would care to comment on our provincial laws in Canada, or even if they care to comment on their state laws in the United States, as to their being strict enough in controlling drivers. We found in many instances—perhaps the majority of them—that it was not the car that caused the accident, it was the unsafe driver who was driving the car.

Mr. R. C. HAEUSLER (*Automotive Safety Engineer, Chrysler Corporation Limited*): May I comment? I would like very much to say that there has been a very great reliance on the law to do the job, whether it has to do with the vehicle or highway or driver, and particularly with regard to the driver. I think it ought to be concerned to an increasing degree with the extent to which we have gone in our efforts to spell out circumstances under which it is a criminal violation to do this or that or something else. I think we have gone so far that we have perhaps caused tremendous damage by having 100 million motorists licensed on this continent becoming very comfortable while living with a criminal record. This is criminal law, it is obvious not civil law. We are at the point in many ways where we are attempting to say that it is a criminal violation to have

an accident. I think we are losing what we attempted to get. We have made people quite comfortable about flouting the law. We have made people contemptuous of law, contemptuous of enforcement, through our unwise efforts to go too far. All the time we have been doing this we have actually done so little with regard to the relatively few factors that we know are closely related to major catastrophes in the way of traffic accidents. I refer here to alcohol. We have done almost nothing in this area in spite of the fact that we have known through accident research that about half of all fatal accidents are traceable to a driver who was not merely drinking, he was drunk. Instead we do the easy thing: enforcement against the ordinary citizen who is exceeding the speed limit. We do not have anywhere in research, gentlemen, the information we should have to justify the extent to which we have gone with regard to making it a criminal violation to exceed a posted speed limit, an arbitrary absolute limit.

We all know that the conditions under which driving occurs have a great deal to do with what constitutes a safe speed, and yet we have set purely arbitrary limits that the citizen is aware have very little meaning. I say we have caused grave contempt with a process we might better be using in the way of concentrating our attention on the few elements and I point out one major element, drinking and driving, that do have a very large bearing on critical fatal accidents. I want to urge caution before we go further in this direction.

Mr. WHELAN: Would you care to comment, sir, on whether our educational programs for youth on driving are great enough?

Mr. HAEUSLER: I am sure it is not and I am sure we are going to have to give far more definition to driver education. Let us recognize that the standards, as they have been spelled out on both sides of the border, relate to the length of time that is spent on this activity. I think if we tried to satisfy you, as car owners, that the car with which you might have some difficulty must be a good car because we spent a certain number of hours or hundreds of hours manufacturing it, we would not get very far. I think, similarly, we need to give far more definition to driver education than that it shall take 30 class hours and that there shall be six hours behind the wheel. Doing what? I think we have to ask to a greater degree what is the content of this course? Is it very heavily related? And I might add that in Canada it is much more appropriately related to the circumstances under which accidents occur and to a consideration of accident risks, and much less related to automobile mechanics, for example, or to law that is not related to accident risks, the distance you may park from a fire hydrant or to insurance economics, or to a great many other potentially irrelevant materials. I think we need to be sure that we are using the time appropriately and we should be concerned with the results rather than the time spent.

Mr. WHELAN: I have one other question concerning safety. Yesterday at one of the testing grounds we saw a safety project that quite impressed me. I believe it was a cement curb type of construction where it was nearly impossible for the automobile to go over an embankment or for the driver to lose control. Does the auto industry work in conjunction with all the departments of highways in consultation on designing highways for safety?

Mr. HAEUSLER: I believe you are thinking particularly of the General Motors demonstration. This work has been brought to the attention of many groups of highway engineers, such as the American Association of State Highway Officials.

the Institute of Traffic Engineers and automotive safety groups. I know that the company is only too willing to give it wider recognition in view of the potential for saving lives through such a process. It is as important, I think, to "delegalize" the side of the road as it is the cars.

Mr. WHELAN: Mr. Chairman, if I may ask another question. This has to do with smog or air pollution, whichever you want to call it. Recently in the House of Commons it was brought up that in the eastern United States, Massachusetts and New York, there was a terrible situation that existed because of smog. We have also heard about California. This morning we viewed the Chrysler labs showing equipment which they are experimenting with—I believe it has been accepted—in both California and New York on this air pollution condition.

The CHAIRMAN: Is Mr. Heinen here?

Mr. LACY: No, Mr. Heinen is not here, Mr. Chairman.

The CHAIRMAN: Would you care to answer Mr. Whelan's question?

Mr. LACY: I can say, Mr. Whelan, that the exhaust emission devices which have been developed by all of the companies in the auto industry were developed specifically to meet an extremely unique situation which exists in the Los Angeles basin. This is a photochemical smog situation that I think exists practically nowhere else in the world. I have some personal experience on this, having lived there for four years. I did some work for Mr. Heinen in 1955 when they were originally developing the instrumentation to measure the exhaust from automobiles in a dynamic situation while you are driving down the road. The two areas that are perhaps most familiar with smog or where the term "smog" is used are Los Angeles, California and London, England. The two areas are completely different. In Los Angeles you have what we term an oxidation atmosphere. In London you have a reducing atmosphere. The two are as diametrically opposite as you can get. Mr. Heinen will say this is like saying male and female, they are as opposite as that. I do not know at this point whether the exhaust emission controls that we have on our car, and which we developed specifically for the Los Angeles situation, will do anything at all for the smog in New York. I suspect that it would help in a carbon monoxide situation but probably not in other areas.

Mr. WHELAN: Is there anyone who would care to comment on whether these are the same type? I gathered from what you said, Mr. Lacy, that it is not the same on the eastern seaboard as it is in California.

Mr. LACY: It is not. I do not know the exact composition of New York's air pollution. I would not like to use the term "smog", but I think it would more nearly resemble that of London, England rather than the Los Angeles type, merely because of the time of year it is occurring and the weather conditions that exist in New York at the present time. The Los Angeles smog could not occur under the temperature conditions and sunlight conditions that prevailed on the eastern seaboard this last couple of weeks.

Mr. WHELAN: Is there any possibility that it could prevail any place in Canada because of our climatic conditions?

Mr. LACY: It probably could, but I do not know at this time whether our exhaust emission control devices would do anything for it.

Mr. WHELAN: I mean the type of smog they have in California.

Mr. LACY: Smog in California? Nothing to the extent that it is in California. One of the measurements of smog in California is the ozone concentration. Ozone is a derivative of oxygen. The average day to day ozone concentration in Los Angeles is greater than the maximum that you will get in just about any other place in the world. This is the day to day average.

Mr. WHELAN: If I could ask one more question, Mr. Chairman. This is also on another subject but it was talked about last night and I had the question written down at that time, too, and Mr. Tolmie brought it up. It is about inspectors. All of our government equipment that we buy from auto manufacturers, and so on, I believe is subject to government inspection while it is being assembled and after it is assembled before they accept it. Mr. Tolmie brought up the fact that food was inspected. I could not help but think on the way home last night which was more important, a chicken or a car? Nearly every chicken you eat is inspected by a government inspector before it is allowed to be sold for public consumption. A chicken cannot really hurt anyone. A car can be a damaging vehicle if it is put in the hands of the wrong people, I recognize this, but if it is not assembled right it can also be a weapon, if you want to call it that. Perhaps you would not call it that. For the number of automobiles you are putting out today do you have a comparable number of inspectors per thousand automobiles as you did three or four years ago? What would your objections be? I gathered last night from the discussion that there was strong objection to the suggestion that government inspectors be placed in automobile plants. In agriculture you cannot do anything unless there is a government inspector looking over your shoulder.

Mr. WOODCOCK: Mr. Whelan, I would like to comment. First, I did not mean my comments to be strong objections. What I really intended to say was that I had strong feelings that this would accomplish the result you wish. We have been finding out more and more in the industry, and specifically in the most advanced industries that are dealing with space science, that the best and most effective way of getting quality is to do it right the first time. This whole zero defect program has grown up in the space technology industry where the chance of error has to be almost eliminated. You cannot inspect quality into products they have to be built right the first time.

Mr. WHELAN: May I interject here. Why does the government, then, demand inspectors when they are buying equipment for the armed services, trucks or whatever they may be, I understand even automobiles?

Mr. WOODCOCK: I think the government have their own specifications for these vehicles and, of course, as any of our customers have the right, they have the right to ensure that these specifications are being lived up to 100 per cent. I am only saying, and I do not say we have strong objections, we would welcome assistance if we felt the result would be profitable to the customer. I really do not, and I think Mr. Scott—

Mr. WHELAN: I was going to say that I do not think you did, but I gathered from what Mr. Scott said that if you had any objections at all, his were much stronger than yours.

Mr. WOODCOCK: I believe his comments were relative to the effectiveness and not that we would oppose it if we felt it would be effective.

Mr. WHELAN: I gathered from what he said that he objected to any type of interference. This was the feeling I got.

Mr. WOODCOCK: May I comment a little further. I think, if we are going to have inspection, that surely this would be much more appropriate at intervals in the use of the car. We are fairly sure the new cars that are built are in relatively good shape. The use, wear, abuse, and negligence that these cars may suffer in service I think is a far more serious consideration with regard to inspection. Cars, particularly in the older age group, surely should have some inspection. The automotive industry would welcome and support any steps that would lead to an inspection of older vehicles on a periodic and effective basis.

Mr. WHELAN: How old would you suggest? How far back should they go?

Mr. WOODCOCK: I would suggest—

Mr. WHELAN: As long as it is on the road?

Mr. WOODCOCK: —eventually all cars should have a periodic inspection. It only takes a mile where you hit a curb or do something rather severe at a bad angle or on a steep curve or do something very negligent with the car where there might be some adjustment upset.

Mr. WHELAN: There could be the necessity to even inspect this year's models from time to time?

Mr. WOODCOCK: I would say all cars should be inspected.

Mr. WHELAN: Thank you, Mr. Chairman.

The CHAIRMAN: Did you want to say something, Mr. Purdy? Mr. Purdy is representing Mr. Scott.

Mr. CARL PURDY (*Product Engineer, Ford Motor Company*): I would like to clear the air with respect to Mr. Scott's opinion. I am sure he upholds Mr. Woodcock's opinion of the fact that we have no objection to more inspectors or government inspectors. However, we feel that we have enough inspectors in the automotive industry.

Mr. WHELAN: That is one thing I did not get answered before, Mr. Chairman. Give you the same proportion of inspectors per thousand units as you did, say, in 1962 or 1963? Do you have the same number of inspectors?

Mr. PURDY: I cannot give you the figure for 1962 or 1963. We now have approximately one inspector for every eleven employees on the assembly line, which is considered optimum as far as we are concerned. I was going to say that I think you can reach an optimum point in quality control. Take the aerospace objects; money is no object as far as quality control is concerned. Every nut, bolt, lockwire and washer is inspected 100 per cent and still they have failures when they come to fire the rocket. It is not all a question of quality control. Quality control will not eliminate defects in the automobile any more than it will eliminate defects in a rocket or, for that matter, in a can of peas.

The CHAIRMAN: Mr. Guay?

(Translation)

Mr. GUAY: Mr. Chairman, first of all I would not like to repeat the questions asked yesterday, but there is one thing I was impressed with during our visit

here for two days. There is a question which occurred to me most often. Why do you have crash tests at speeds between twenty and sixty miles an hour, when one knows perfectly well that few accidents indeed happen at these speeds because we are always in control of the vehicle then?

(English)

Mr. LACY: Mr. Guay, your question is why do we crash cars, because people should not have accidents between 20 and 60 miles an hour. I would be the first one to say you are right. We should not have accidents between 20 and 60 miles an hour, but surely 95 per cent of all the accidents that do happen are happening at these speeds. Therefore that is the speed range within which we would test them. I see no reason to test cars beyond 60 miles an hour. A barrier test at 60 miles an hour would be equivalent to an intersection crash, I would say, of something in excess of 100 miles an hour. Under 20 miles an hour barrier tests would be of some significance, but these are the speeds at which accidents do happen. I agree they should not, but they do.

(Translation)

Mr. GUAY: Well then, is this a question of the vehicle, if it happens more at low speeds than at high speeds? We know perfectly well we have vehicles, the speedometer of which can go up to 120 miles an hour. I do not say I always drive at 120 miles an hour, but we do drive much faster.

(English)

Mr. LACY: As I indicated, a barrier crash at 60 miles an hour is equivalent to a much, much higher speed than when it is car to car. Car to car impacts usually result in ricocheting and spinning down the road, where the stopping distance takes place over a much greater distance than the type that you saw at the proving ground yesterday and in the films today where they hit an immovable barrier and all of the impact and deceleration takes place over an extremely short period of time. That equates itself to a car to car crash at much higher speeds. I do not really think that we should test ranges beyond 60 miles an hour barrier. Certainly we cannot today meet the requirements of a 60 mile an hour barrier, so there is really no point in trying to go beyond that at the moment.

(Translation)

Mr. GUAY: Another question, Mr. Chairman. I believe anybody can answer it. I would like to know if you study accidents which happen on public roads outside your test grounds. In your test grounds you can simulate several types of accidents, but I would like to know whether you have field teams which go to the scene of any accidents, especially in cases when there are deaths?

(English)

Mr. LACEY: I would like Mr. Haeusler to answer that, if he got the question.

Mr. HAEUSLER: Yes, I did. I think the investigations conducted by the Cornell Crash Injury Research Program are the very kind you are asking about in that these are actual highway accidents. The investigation is conducted by specially trained highway patrols or police. The details obtained are very much more adequate than are obtained in ordinary accident investigations. They are obtained for the express purpose of determining how the people were injured

how they were killed. It is such work as this that led to the whole series of changes that you have become aware of, such as the interlocking door latches; the acceptance of what was then only an aircraft device, the seat belt; the emphasis on cushioning of the interior; the use of double ball joint mirror mounts; the energy-absorbing steering wheel, and now the energy-absorbing steering column; the further development of laminated safety glass with a thicker interlayer and a controlled bond, and so on. All of these steps had their roots in the study of actual highway accidents, of which some 70,000 have now been very substantially documented by this program. About half of the states in the United States have contributed and we have no reason in Canada to believe that the accidents are fundamentally different than are occurring there, and we have the opportunity to make the fullest use of this data. It is public data.

Mr. LACY: I would just like to add that the Traffic Injury Research Foundation which is primarily a medical group located in Ottawa is attempting to obtain a co-operative effort between the universities and the provincial police departments to have similar investigations carried out in Canada to get this same type of data that the Cornell Crash Injury Research group is getting for the United States.

Mr. WOODCOCK: I would just like to commend Mr. Bancroft for the work he is doing in this area in Canada. He is most interested in this phase and I think he is working with the traffic injury research people in Ottawa. We certainly support and can use as much data of this kind as can possibly be obtained.

Translation)

Mr. LATULIPPE: Mr. Chairman, judging from all the questions asked, the visits to very interesting laboratories on our tour, the two large subsidiaries producing cars in Canada, I believe the questions I wanted to ask were, in fact, answered. However, Mr. Chairman, I would like to take this opportunity to say that I felt about the visits we have had here. We are very happy, we are pleased to have had the possibility of getting acquainted with these gentlemen, we have had the opportunity to talk to them and to have had the possibility of visiting their laboratories. We are very grateful to you. We do appreciate what you did for us. I would like to say, on behalf of the population I represent, that I congratulate you most sincerely. You produce beautiful machines, beautiful cars, which everybody would like to own. I believe there is no citizen who does not appreciate that your cars are beautiful, they are spacious, they have beautiful colours, they are very attractive, very nice to look at in every possible way. But there is only one thing missing. There are many citizens in Canada who just look at these cars, who cannot really afford to buy them. I believe this is a matter for the legislators: to give people the possibility of buying what they would like to have and what is very useful to have. As far as safety devices are concerned, I know you have been doing expert research, to improve the situation. We all agree that there is a lot to do still in the field of safety devices which could be included in these beautiful cars, these beautiful jewels that we like, all of us. I know that you, too, are in favour of the most safety possible. Once you have found a way to produce vehicles which can go at incredible speeds and you have given maximum comfort to these cars, I am quite sure you will be able to include the necessary safety devices. There are many such safety devices which could be

listed. We have seen your labs, we know you are working as much as you can in this respect and that you are trying to solve these problems. These problems will certainly be solved one fine day. But we are not asking for the impossible. We are asking you to act in a logical way. We are asking you to be logical and to do all you can to save human lives, because life is invaluable. There is no price for a human life. We should protect human lives as much as possible, and I know there are many factors involved which can be considered in very many ways. You have all you need: you have engineers, technicians, personnel, all the available means. With all the data and information you have at the present time, I believe you can do great things and the population will greatly benefit. Thank you very much indeed.

The VICE-CHAIRMAN: Thank you, Mr. Latulippe. Mr. Cantin.

Mr. CANTIN: Mr. Chairman, during these two days with the automotive industry, we could see that industry is doing its very best to try and minimize the consequences of automobile accidents. Now, this is my question. After this study and once the Committee has presented a favourable report, if the Canadian Government introduced legislation on automotive safety, would you have practical suggestions to offer our Committee to ensure real co-operation between the government and your industry?

(English)

Mr. WOODCOCK: With regard to legislation, I think, if this is to be, we would first of all like the maximum opportunity to co-operate with you. Secondly, I would say that standardization of this kind of legislation, as well as driver training and highway and traffic control legislation, should be at the maximum both in cities, provinces, countries and states. The integration of our industry because of our trade agreement, I think, makes it more and more imperative that we do, in fact, come up with the maximum possible standardization of any proposed legislation. Again, we would certainly want to co-operate with you and have an opportunity to work with you if legislation is in the books.

The VICE-CHAIRMAN: Did you have something to say, Mr. O'Callaghan?

Mr. ROY P. O'CALLAGHAN (*Technical Manager, Kaiser Jeep of Canada Ltd.*): Yes, Mr. Chairman, I would just like to say one thing, and that is that I think we should recognize that the automotive industry is now a North American industry and not particularly American or Canadian. I would like to support very much what Mr. Woodcock has said about ensuring some degree of standardization because the government of Canada have seen fit to make it a North American industry, and I think with that we should all recognize there are advantages in having standardization in respect of safety legislation.

Mr. CANTIN: Would you consider taking part in a kind of advisory board?

Mr. O'CALLAGHAN: Yes, certainly, I would have no objection at all. I think all of us up here have demonstrated that our interest is in traffic safety. We would do anything—and I am sure I speak for the rest of my colleagues here—all to cut down the appalling loss of life on the highways in Canada.

Mr. CANTIN: Do you feel that it will help to have better co-operation?

Mr. O'CALLAGHAN: Yes. I think this is a job that cannot be done by any one single segment. It cannot be done by legislation. It cannot be done by the

automotive industry. It is a co-operative job that requires everybody's talents, even individuals, as I think Mr. Lacy mentioned earlier, and bodies that have an enormous amount of material stacked up from the work they have done. This should all be made available to everybody who is interested in promoting traffic safety.

The VICE-CHAIRMAN: Are you finished, Mr. Cantin? I guess every member of the committee has now had an opportunity to ask questions. There are a few minutes left and I recognize Mr. Addison.

Mr. ADDISON: I will just take a few minutes. Mr. Chairman, our proposal was pretty well shot down last night for a combined research centre in Canada in so far as auto safety is concerned. I would like, perhaps, to try a different tack. I also appreciate the position of the witnesses. Perhaps one or two might offer a personal comment. Yesterday and this morning, I believe, there was reference made to a grant of about \$10 million provided by the manufacturers to universities in the United States, principally Michigan, UCLA, Cornell and Georgia Tech, I understand. In Canada we have a very fine scholarship program supplied by at least one automobile manufacturer for students in Canada. I was wondering if there could not be an attempt to bring research funds into Canada on a North American basis, as we are talking about the U.S.-Canada pact. Perhaps we might use the same basis of proportion, and I think the basis of proportion—I could be wrong on this—is that by the end of 1968 Canada is required to produce 1 per cent of the total North American car production. This would, if we are talking about $7\frac{1}{2}$ per cent of \$10 million, amount to about \$ $\frac{3}{4}$ million for research in automobile safety spent in Canada with our universities. Now, I understand at the present time the Assumption University of Windsor is conducting studies into the human capabilities of automobile safety. An attempt is also being made by the Assumption University of Windsor to obtain a grant for \$1,000 from the National Research Council. The University of Ottawa is carrying on, I understand, a colour-blindness study in connection with traffic lights and signs. The University of Western Ontario is carrying out a related study on mechanical properties of bones.

Now, is it the intention of the automobile manufacturers to make funds available to Canadian universities in a proportionate amount to that given to American universities? I understand this is a policy question and I think we settled that last night, but I would like to hear your comments or one comment.

Mr. HAEUSLER: Mr. Chairman, I am sure that we are very much interested in proposals that research be done in Canada as well as in the United States. As far as proportionality is concerned, I do not think we have thought along these lines even within the United States in the sense that we have entertained individual proposals for research on the basis of their merit, on the basis of the competence of the staffs or the facilities for doing such research as may be contemplated. I think this will be equally true in Canada as in the United States. Simply historically, it has happened that the research has been established rather well. We were able to take advantage of research facilities already set up and operating, and the natural tendency was to sustain such research and expand it. It is not a question, I think, of unwillingness in any sense to consider a research project here.

Mr. ADDISON: Do you think it might be fair to ask, Mr. Chairman, if the manufacturers perhaps would consider in the future such a proposal so that a portion of the amount of money given by the manufacturers to automobile safety would be designated for Canadian universities on specific projects you would like to see investigated.

Mr. LACY: I think it would be fair for us to consider such things. I would like to say that the auto industry is one of the prime supporters of all of the safety leagues across Canada. This is an area where we have had co-operation long before this became a public issue. When I say "became a public issue" I am not crying about that, we are delighted that this is becoming a public issue because we are now getting the kind of support and interest by the general public that we must have if we are going to be successful in any of our efforts concerning vehicles or drivers or highways.

To give you an illustration in a mild way of the type of co-operation we have, two weeks ago I drove from Toronto to Timmins and back with Mr. Raham here, in an Ambassador yet, to sit in on an Ontario Department of Traffic highway safety workshop, to which I think all of the members here have contributed over the past five years and we will be continuing in this vein. There is considerable support by the automotive industry of safety institutions such as the Ontario Safety League all across the provinces. When it gets to universities I think it is a fair question, yes, we would consider this.

Mr. K. B. RAHAM (*Chief Product Engineer, American Motors Corporation*) I think I could add just a little bit to this. Mr. Lacy mentioned earlier that the Traffic Injury Research Foundation is doing accident research work and they are receiving a portion of their financial necessities from the automotive industry. I think this idea of supporting universities in traffic and safety research by the automotive industries is worthy of further consideration as it applies to Canada. I certainly think our company—this is only my personal opinion, mind you—would consider such an item. I think it would do much to further the relationships between the two countries. We now have an integrated automotive industry, and I think perhaps this would even go one step further in integrating some of our safety research, and so on.

Mr. ADDISON: Thank you, Mr. Chairman.

The VICE-CHAIRMAN: Are you finished? Mr. Grafftey?

Mr. GRAFFTEY: Mr. Haeusler, I would like to ask you a couple of detailed questions before I end up with a couple of general ones. Mr. Haeusler, do you feel that by allowing the gauge of steel to decrease in the building of cars the safety sacrifices have been involved over the past years?

Mr. HAEUSLER: I think the gauge of steel cannot be used as a measure of safety or protectiveness of the car. It is indeed related but I think we are more concerned with the final result in terms of resistance to penetration, in terms of energy absorption and in terms of protection against crush in roll-overs. I would only urge that whatever level of protection we want to set in co-operation be set and then we judge the product by whether it meets such a requirement rather than judging it by gauge of steel or any other design measure. Steel can, indeed, be used more effectively in one design than in another, even for a given gauge.

Mr. GRAFFTEY: From the layman's point of view, going both through your plant and through Ford and General Motors, as we have, I get the impression that everybody in the other two industries in a similar position to you said that great difficulties are experienced in getting ready for standards because of the advance planning the industry needs to re-tool, and that sort of thing, in order to meet these standards. From the layman's point of view, though, while I am impressed with the great job of work the engineers are doing in terms of safety and safety research in engineering, that a lot of the advanced planning that is needed is dictated by considerations of styling more than safety, research and engineering. I am not trying to be argumentative, but in a lot of the advance planning, from a layman's point of view, it seems to me that you as safety engineers are told that this is what the car is going to have to look like in 1969, and give safety engineering critiques that are going to fit into our preconceived ideas of styling. Would you comment on that?

Mr. HAEUSLER: I think these are really two separate subjects, each with its own merit. However, I think the matter of concern right now which you have been hearing a good deal about in connection with the standards that are prominent in the United States is a concern with regard to lead time, with regard to the time it takes to change style, design and tooling. It is simply the time it takes to actually do the work on the drafting board and to do the work in terms of creating stamping dies, for example, such as will produce new parts. In some cases it may be as long as three years, in other cases it may be three months. I know the major activity that will arise in the United States within the next several days as the details of the new standards are published will be an activity of determining what these detailed standards mean in terms of each and every truck and car model that may be affected and as to which parts must change and how long does it take to get new tools to make the parts as required. This is not really a styling consideration at all at this time.

Mr. GRAFFTEY: In my conversations with you both private and public you have often indicated to me that you do not feel, in spite of the fact we need to know more about this senseless epidemic of highway death and injury, that we are utilizing the information we already have to the full extent. From that general premise which I think is your point of view, Mr. Haeusler—I do not want to put words in your mouth—for instance, on the subject of lap belts and locking the door of an automobile, if the citizen today put on his seat belt and locked the door of his car, in your judgment, Mr. Haeusler, what percentage would he reduce the possibility of death or injury just by doing something we already know about, locking the door of his car and putting on a lap belt or a shoulder harness?

Mr. HAEUSLER: If you have a shoulder belt, for example, as you have mentioned, I would say that we could, as a minimum, reduce to one-half the number of fatalities among car occupants. In the United States this will approach 40,000 a year. Half of these people could have lived with just those specific steps, utilizing equipment which is either standard or available for all cars. The lap belts are standard, the door latches and locks that we are talking about are standard. They require co-operation. The lap belts need to be worn and worn properly. The door locks need to be pushed down in each instance. The shoulder belts are available for the driver and right front passenger for all of these

various makes and models. We urge that they be accepted and use. We would like very much to see them universally accepted.

Mr. GRAFFTEY: This is my last question to you, Mr. Haeusler. While you have often said publicly and privately that we do not utilize the knowledge we already have—I am going to try and make it in the form of a question rather than a declaration on my part—would you agree that while we are not utilizing what we already have in terms of why people are getting into crashes and what kills or injures once they are in the accident, do we not need to spend millions and millions of dollars in private and public research to find out really why people are getting into accidents and what is killing or injuring them once they are in them?

Mr. HAEUSLER: Specifically with regard to the first of those two areas, that is, finding out more about the contributing factors to accidents, we particularly need to spend very much more money in doing this. The accident investigation program on both sides of the border is very primitive thus far. It does not remotely approach the excellent investigation that is conducted with regard to an aeroplane crash to determine the contributing factors. I would urge that we give this much more attention. We have rather creditable work already done with regard to determining causes of injury and death but we have almost nothing done, except in the areas I have touched on such as the relationship of alcohol to fatal accidents, in this matter of other factors and their contribution. We have just begun to recognize the importance, for example, of vehicle condition as a factor. It is significant that the research that begins to be creditable in this area has just been published in these last four months, a study by Harvard University, incidentally. I think we need much more of that kind of thing to guide our programs. The programs we are talking about are going to cost hundreds of millions, billions of dollars. The money is not limitless. I think it behooves us all to be much more concerned with finding out which of these programs are likely to produce results and which are simply expressions of good intent and perhaps are very expensive luxuries which are doing very little for us. Our major differences in research can indeed guide us to wise expenditure.

Mr. GRAFFTEY: Just in closing, Mr. Haeusler, a real example of what you said about public dollars for research, in Canada three years ago at Ste. Thérèse, Quebec, we had an air crash where one hundred people were killed. We put that plane back together piece by piece and had a judicial inquiry, and the bill to our federal government was \$4,800,000. We kill 100 people on the roads every week and the public treasury does not offer one research dollar to the automobile industry.

Mr. ADDISON: On a point of order, Mr. Chairman, that is not the fact. The research council does provide funds. The University of Western Ontario just applied for a \$7,000 grant. Seven thousand is not much but—

Mr. GRAFFTEY: My statement will stand on the record, Mr. Chairman.

The VICE-CHAIRMAN: We will not get into an argument over this. I will not recognize Mr. Ryan.

Mr. RYAN: Mr. Chairman, I would like to ask a couple of questions of Mr. Raham specifically. Mr. Raham, in your opinion are disc brakes better than drum brakes on the over-all, and in particular are they better on hills?

Mr. RAHAM: They normally have a greater fade resistance than the standard type of brakes.

Mr. RYAN: What do you mean by "fade resistance"?

Mr. RAHAM: You can apply a disc brake for a longer period of time or give it more stops before it begins to lose its effectiveness. Any normal brake has a characteristic that after a given number of applications, or dragging a brake for a given length of time, the linings become so hot that they lose their friction characteristics and the brake acts as though you had no brakes at all. Now, disc brakes have this property of retaining this braking effectiveness over a longer period of time. I personally use disc brakes. I like them a lot. I think they do an excellent job.

Mr. RYAN: Would they be of great benefit to the public from a safety standpoint if they were used on passenger cars generally?

Mr. RAHAM: I do not know that I could say for sure that they would. They are used now, but keep in mind that in most instances they are used on front wheels only. As you probably noticed yesterday, your braking effectiveness on the front wheels is superior to the braking on the rear.

Mr. RYAN: About 40 to 60 per cent was the ratio, is that it?

Mr. RAHAM: The drum brakes that we have are adequate and do an excellent job. I am not so sure that disc brakes, if they were applied to all cars, would be a better type of brake. Mind you, there are good disc brakes and then there are disc brakes that are not so good, the same as with drum brakes. It depends a lot on what type of performance is required and how they are to be used; the length of life you expect from a set of brake linings.

Mr. RYAN: Would you consider it an advance to make disc brakes a general requirement in all cases?

Mr. RAHAM: No, I do not think it should be made that way. I think perhaps it would be more realistic, as we mentioned earlier, that any specification relating to brakes should be an objective term, such as it had to have certain degrees of fade resistance, certain stopping effectiveness, and that sort of thing, rather than specifically saying that we will specify disc brakes.

Mr. RYAN: Is your company working in the field of radial or low profile tires? If so, what is your opinion of them?

Mr. RAHAM: We are currently using—and I think this applies to all the automotive industry now—what are termed low profile tires. Experimental work is being done with radial ply tires in our company, and I am sure with most of the other companies too.

Mr. RYAN: What are you finding are the results?

Mr. RAHAM: I have been driving a set of radial ply tires for the last year and for high speed performance or in the neighbourhood of about 40 miles an hour on good smooth highways they are excellent. They have very good stability, and the cornering characteristics are excellent. At low speed, and particularly on rough streets like Davenport Road in Toronto, they leave much to be desired. They are very, very rough and anyone, for instance, driving a taxi equipped with radial

ply tires would not be very happy with them in that sort of service. Their life is a little longer, they have increased life.

Mr. RYAN: From a safety standpoint, on the over-all, what would your opinion be between the types we are using now and these types?

Mr. RAHAM: I would say in city driving and normal type of low speed operation I do not know that they would be considered any safer than normal tires. As I say, they do have admirable characteristics at about 40 miles an hour I think perhaps if you would like enlargement on this, Mr. Ralph McMillan from the Goodyear Tire Company is here and perhaps he can enlarge upon this ever further.

Mr. RALPH McMILLAN (*Goodyear Tire and Rubber Company*): I will confirm what Mr. Raham has said on the area of radial ply tires. They are definitely very satisfactory on current types of vehicles at high speeds. At lower speeds they have some undesirable ride characteristics. Realizing that this committee is interested in the area of safety, I do not believe that there is any difference in the safety level of the radial ply type tire to the bias angle type tire.

An hon. MEMBER: Are you with American Motors?

Mr. McMILLAN: I am with Goodyear Tire and Rubber Company, sir.

Mr. RYAN: Thank you very much, Mr. McMillan. I have one more question Mr. Chairman, of Mr. Raham.

Mr. GRAFFTEY: Could I ask a supplementary before we go on?

The VICE-CHAIRMAN: After Mr. Ryan.

Mr. RYAN: My final question to you, Mr. Raham, is this. Is your company working in the area of energy absorption in bumpers and front ends?

Mr. RAHAM: We, of course, have had a unit type body construction for good number of years, about 25 years to be exact, and we have continuously done research work concerning the energy absorption of the front and rear end of our vehicles, and still try to retain the package compartment with its integrity to protect the passenger and this work is continuing at a growing pace, I would say.

Mr. RYAN: What material do you use in your cars?

Mr. RAHAM: This is just a standard steel body which to date we have found to be the best because you get a very high energy absorption value from the crumpling of steel.

Mr. RYAN: Like you do in the steering column?

Mr. RAHAM: Just exactly like you have in the steering column and it is the way, actually, that the steel is formed and welded together and put as an integral structure that gives you the end result you want.

The VICE-CHAIRMAN: Mr. Grafftey, you have a short supplementary?

Mr. GRAFFTEY: I have a very short supplementary. Without getting into the ramifications of how you are marking tires, sir, it has been suggested to us that because public authorities are not bringing the fabrication of tires under the rule of law that as high as 40 per cent of Canadians are now driving on overloaded tires. Could you comment on that?

Mr. McMILLAN: I cannot comment on that because I am personally not familiar with the vehicle loadings. The tire itself is designed to carry certain load factors. What the customer himself does in the way of loading his vehicle and what the public do in the way of controlling their inflation pressures is a very, very important part of the answer to your question of whether the tire is overloaded. The load carrying characteristic of a tire involves the area of inflation. This is a field in which I feel there is a considerable need for a campaign to make the public aware of the need for maintenance of proper tire inflation through the auspices of the Rubber Association. There are publications being devised to make the public aware of this very severe need.

The VICE-CHAIRMAN: Mr. Tolmie, you have one question?

Mr. TOLMIE: Yes, Mr. Chairman. I think all of us agree that our main object is to get as much research data as soon as possible to overcome this traffic safety problem. Now, there are four companies working on four different research programs and evidently, for various reasons they have decided not to exchange ideas and data. I was wondering if you considered the possibility of inquiring into companies which are doing research work, for example, in West Germany or Sweden or other foreign countries? It appears to me that it would perhaps be a good idea to investigate these possibilities. The point I am making is that if it is to be a crash program, if we are to reduce duplication of effort, then if we could get an exchange of ideas, for example, with companies in West Germany it might be beneficial. It was brought to my attention, for example, that there should be a lot more research with regard to the dummy which is used in the simulated impacts. My question is have any of the companies contacted any foreign companies to see what type of program they have and, if so, have you used any of their ideas?

Mr. LACY: I would like to repeat something that I said last night. There is a very high degree of co-operation within the industry. When I say within the industry, I am speaking of the broad industry. It goes far beyond motor vehicle manufacturers now. I did bring in for the committee's interest the 1966 copy of the Society of Automotive Engineers handbook and "automotive" covers everything that moves by itself, including space aircraft and the rest. This is not necessarily an American organization. Its headquarters are in New York. There are sections and members all over the world. Next January there will be the large exposition in Cobo Hall, which will go on for the best part of a week, and I will guess the number of papers that will be presented there will exceed 100. I would suspect a very great number of those will be devoted to aspects of safety. We have an Ontario section of approximately 900 members. Mr. Woodcock is the treasurer. I happen to be the vice chairman at the moment. It is international in scope, as I say. Mr. Harry Cheseborough this morning mentioned that he was president of SAE in 1960. One of the more recent presidents was Mr. Jack Dymont, the chief engineer of Air Canada. I could read to you the specifications and standards that have been mutually developed throughout the industry and I say the automotive people plus suppliers, plus brake manufacturers, and all the rest of it, develop these standards.

Mr. TOLMIE: My point, sir in particular is this. I was wondering if you have any idea as to the progress of, say, research programs going on in West Germany? Now, they have a high accident rate and my only point is that if they

have certain data and certain knowledge would it not be advisable to exchange opinions and ideas for your mutual benefit?

Mr. LACY: Through these mediums we do, but I think Mr. Haeusler may have a comment.

Mr. HAEUSLER: Mr. Chairman, specifically we have obtained considerable benefit from their research. You mentioned West Germany, and some of the best research leading to the new windshield glass involving the thicker plastic interlayer and the control of the bond between the plastic and the glass grew out of work that was done in West Germany. It was reported internationally through technical channels. We benefit as much by their work as they do. With regard to the so-called three point type of belt arrangement, a great deal of the ground laying work had been done in Sweden. Bertel Aldman, for example, gave papers here, not only at the Society of Automotive Engineers, but at the Stat conference, which is the research conference for the people who are working in crash injury research for this whole continent. It has been provided with papers from Australia as well as Germany and Japan and Sweden and Norway. So, we have indeed benefited. That portion which you have been concerned about and which may, indeed, be the subject of some limit of exchange has been purely engineering. The application of this research to particular car models is somewhat in a proprietary area but the research itself, which lays the groundwork and provides both the stimulus and the guidance, has been very well shared internationally.

Mr. TOLMIE: To eliminate duplication, would you consider going to the extent of assigning a certain sphere of endeavour to the American companies and perhaps another, for example, to the German companies? I know for some reason, and you mentioned anti-trust laws, you cannot cooperate fully, but would this not be a good opportunity to exhaust this possibility?

Mr. HAEUSLER: This would be a way to do it, of course, simply to divide up the job. Actually, we have gained a great deal by having each of these areas covered by several of the research groups simultaneously and the competition that has resulted has been of very substantial benefit—I mean professional competition—in gaining these grounds with regard to, for instance, this glass and gaining ground with regard to upper torso restraints, of which the three point belt is the common example. We have gained a great deal by simultaneous work in Britain and in Sweden and the United States.

Mr. TOLMIE: Do you have an exchange of engineers between companies?

Mr. HAEUSLER: We do in terms of meeting each other in the International Standards Organization, for example, the Stat conference is another, the American Association of Automotive Medicine. These conferences do indeed bring engineers both ways. Some of our people go to Europe and some of theirs come here, so we are exchanging quite substantially.

Mr. LACY: Could I give you a good illustration of that, an up to date one and one that you have seen within the last two days. You saw a collapsible steering column. We prefer to call it an energy absorption steering column. The term "collapsible" sort of shakes you. That was a development of the General Motors Corporation. Chrysler are using it and American Motors are using it. We used it simultaneously to General Motors installing it on their cars and in the same models. I think this illustrates the highest degree of co-operation in utilizing the latest technological development that is possible.

The VICE-CHAIRMAN: At this point I would like to thank Mr. Lacy for supplying us with the 1966 Handbook of the Society of Automotive Engineers. May I have a motion so that this book will be made an exhibit to today's proceedings?

Mr. MATHER: I so move.

Mr. WAHN: I second the motion.

Some hon. MEMBERS: Agreed.

The VICE-CHAIRMAN: Motion agreed to. Are you finished, Mr. Tolmie? Mr. Mather?

Mr. MATHER: I have one short question, Mr. Chairman. I was very much interested in Mr. Haeusler's remarks in connection with the importance he attaches to alcohol in relation to traffic accidents. I happen to have a bill before his committee which will make tests mandatory for such situations.

I think he mentioned the figure of 45 or 50 per cent of traffic fatalities which are found to have involved alcohol, which is the figure we also have had in Canada. I just wondered if other representatives of the automotive industry share his views in relation to the significance of alcohol in traffic accidents, and if they would give us their impressions on this.

Mr. WOODCOCK: I certainly share Mr. Haeusler's view. I think it is a very special problem. Certainly action in this regard would be helpful in preventing fatalities.

Mr. O'CALLAGHAN: I would just like to say you cannot dispute what Mr. Haeusler said. The statistics speak for themselves so I think, as Mr. Woodcock said, anything done in this direction must obviously result in some improvement in the accident rate.

Mr. WOODCOCK: There have been some comments made that mandatory alcohol or breathalyzer tests would be an invasion of privacy. I personally do not share this view. I think it would be a good thing. We have speed limits on the highways and perhaps we should have alcohol limits in our blood. The reason I do not think this would be an invasion of privacy is that we are now required, upon re-entering Canada from many European and outside countries, to have a smallpox vaccination. Is that any more of an invasion of privacy than blowing into a balloon? I do not think so.

Mr. LACY: You might be interested in a little sidelight of the same thing. We as an industry, through the Motor Vehicles Manufacturers Association, get coroners' reports on fatal accidents where they think the vehicle is involved. The supervising coroner for Ontario sends them to us. There was one recently that we found quite interesting and those of you who know Toronto will probably recall the site, it is St. Clair and Keele street. The subway is there and it is cobblestone and it is pretty rough. There was an unloaded tilt-cab truck—that is cab over engine truck—which went down the cobblestones, went out of control at a pole, the driver fell out, hit his head and was killed. His blood alcohol content was .15, which I am sure in your considerations will mean in the vernacular that he was plastered because .08 has been recognized as impaired. You have to work at it to get .15 into you, most people cannot do that. The coroner's jury recommendation in this case was that the manufacturers should not make tilt cabs with fibreglass bodies.

(Translation)

Mr. GUAY: My last question, Mr. Chairman, I do not know which company will answer. I would like to know if the front-wheel drive on cars, particularly on new cars, represents a safety factor, so far as braking and control of the car are concerned.

(English)

Mr. WOODCOCK: I think the front wheel drive gives you some different characteristics, some of which are pleasing. It is not in itself a safety factor, no. Cars with front wheel drive and cars with rear wheel drive can be designed with the same degree of safety. This is not in itself a safety feature.

Mr. AIKEN: Mr. Chairman, I would like to take advantage of the presence of so many excellent engineers to ask one question. I have been impressed by the restraint that is placed on transport drivers by an instrument known as a tachograph, which is carried in most transport vehicles. The restraint is that their movements, speeds and times are all recorded permanently for examination after the trip is over. Where they stopped and for how long, at what speeds they travelled, and so forth. I have been wondering whether, without looking into the human factors at the moment, any thought has been given to the possibility of installing a similar instrument in motor vehicles and whether it would be an expensive proposition if it could be sold?

Mr. LACY: I would like to briefly comment on that. These tachographs used in trucks basically cover a 24-hour period. Even in a 24-hour period your excursions beyond the speed range, and so on, must be examined rather closely under a magnifying glass to properly interpret them. I believe there are some on the market that cover a seven-day range with a roll of paper. These could be put on vehicles but the only purpose they would serve is when somebody looks at them and decides what to do with them. Also, how often should they be examined? Now to cover, say, a six month period, I do not think you could set up any kind of enforcement or examining agency which could possibly survey all the cars any oftener than every six months. I think it would be a bit difficult to derive sufficient data that would be useful in any respect. Certainly all of these instruments have ways of either becoming defective during that particular time or certainly they can be tampered with. I seriously question whether they would be of any use.

Mr. HONEY: Mr. Chairman, I received a representation from my riding and told my constituents that I would place it before these people, and I do so now do not wish to extend the time, but I do this only because I have been asked. The representation I have is that the matter of automobile safety could be solved very quickly if the speeds of all motor vehicles were governed. Could I have comment on that, please?

Mr. HAEUSLER: Let me at least take this portion of the subject. I am sure that the interest in governing the speed of the vehicle stems from the very widespread belief that traffic accidents are featured by high speed crashes and that it is speed far in excess of highway limits that is responsible for these. That is very far from the truth. It is true, of course, that such crashes occur and when they happen they are spectacular, they are sensational. But we need to make the point many times over that the accidents that are causing injury and death are

occurring at very ordinary speeds, the sorts of speeds that are frequently encountered in urban traffic rather than such high speeds as might exceed what-ever would be an appropriate governed value.

(Translation)

The VICE-CHAIRMAN: Mr. Chairman and our guests, Committee members, Ladies and Gentlemen, it is the first time that the present Committee on Justice and Legal Affairs has had the privilege of sitting outside Parliament. We all agree that we had extremely interesting sessions and we appreciate the very warm reception we had in Detroit and Windsor.

I wish to especially thank Dr. Leddy, President of this University, and his executive for having permitted this committee to have the use of this very convenient and very nice hall. In your name I wish to especially thank the distinguished representatives of the different auto companies who have very willingly appeared before this committee and have very competently answered all our questions. I think it was a very useful experience and a very important occasion for us. I also wish you to convey our thanks to those who were here last night who could not be here today. We are very impressed with the efforts being made today by all the companies to improve highway security, and we were certainly very impressed with our visits to the different testing grounds and laboratories, and especially the wonderful co-operation we had all through these visits. We are very appreciative of our visits to these different companies. I also wish to thank all those who took part in our proceedings one way or the other and also all those who assisted in our deliberations. Thank you. We are running short of time.

The meeting is adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

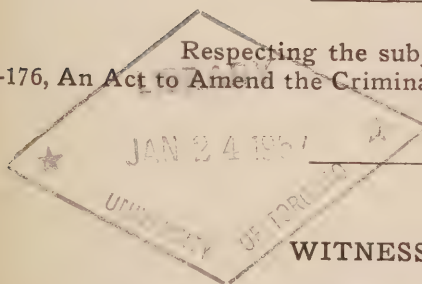
Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 22

TUESDAY, DECEMBER 6, 1966

Respecting the subject-matter of
Bill C-176, An Act to Amend the Criminal Code (Insanity at Time of Trial)



WITNESSES:

from the Canadian Mental Health Association and representing The Canadian Association for Retarded Children: Mr. Gowan T. Guest, National President; and Dr. J. D. Griffin, General Director.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,

Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Wooliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, December 6, 1966.

(26)

The Standing Committee on Justice and Legal Affairs met this day at 11.30 a.m. The Chairman, Mr. Cameron presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Grafftey, Guay, MacEwan, Mather, Ryan, Tolmie, Wahn (10).

Also present: Mr. John Munro, M.P.

In attendance: From the Canadian Mental Health Association: Mr. Gowan T. Guest, National President; and Dr. J. D. Griffin, General Director.

The Chairman asked the Clerk to explain an invitation by Dr. Gibbs of the National Research Council to observe a machine, invented by him, which measures impairment.

Agreed—That the invitation be accepted.

The Chairman then introduced the witnesses and invited them to make a statement re Bill C-176.

Following questioning, the Chairman thanked the witnesses for their valuable contributions to the proceedings.

At 1.15 p.m., the meeting adjourned to the Call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, December 6, 1966.

The CHAIRMAN: Gentlemen, we are going to commence the meeting. I understand in due course we will have a quorum. I am first going to ask Mr. Ray to explain to the Committee the proposal by Dr. Gibbs who would like members of the Committee, if they so desire, to visit his laboratory. He is busily engaged in improving, so he believes, the machinery for taking breathalyzer tests. Now, if you would tell the members just what he has in mind I would appreciate it.

The CLERK OF THE COMMITTEE: Dr. Gibbs has approached myself and the Chairman. Apparently he has been doing some experiments for quite some time with a machine which is to measure human reaction under stress, lack of sleep, alcohol; and certain impairments. He feels this machine of his is a much better gauge of impairment than the breathalyzer test. It does not measure amounts of alcohol but it does measure impairment. He has given papers before the National Aeronautical Administration in the United States and, of course, at several universities. He has not made it public yet but he would like very much to have the Committee or several members of the Committee go out to the National Research Council at Montreal Road some time to observe his machine. He has subjects which the army have given him which he has been experimenting with. He dates the Chairman suggested was December 20, which is a week next Tuesday or two weeks from today. We would not have to go out necessarily as a Committee but perhaps several members would like to go out and observe this machine. I think Dr. Gibbs has quite an experiment set up; he is very excited about it. I think he would be very interested to have the members go out.

The CHAIRMAN: Does that seem to be satisfactory? How many members would like to go? It looks as if everybody here would like to go. We will leave it to Mr. Ray to make the best arrangements he can and then to notify the members. I do not imagine it will be a Committee meeting; it will be going out there and observing what Dr. Gibbs is doing and receiving whatever additional information it will give us or whatever benefit we will obtain from it. Is that agreed?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Then I have pleasure, gentlemen, in introducing to you on my extreme right Dr. John D. Griffin, M.D., M.A., D.P.M., psychiatrist, General Director of the Canadian Mental Health Association, graduated in medicine, University of Toronto in 1932; post graduate work in the United States and England; joined the Canadian Mental Health Association in 1936 as assistant to the founder, Dr. C.M. Henks; became general director of the C.M.H.A. in 1952; former lecturer at the University of Toronto in mental health aspects of education and social work. During the war he was consultant psychiatrist to the G.M.S. (Army) at Ottawa.

I also have the pleasure of introducing Mr. Gowan T. Guest, barrister at law, National President of the Canadian Mental Health Association, educated in Toronto at the University of Toronto, Bachelor of Arts; and Osgoode Hall; the University of British Columbia earned Bachelor of Law. He is a partner in the law firm of Robertson, Alexander and Guest of Vancouver. Mr. Guest has been called to the bars of British Columbia, the Yukon Territory and Ontario; first elected a director of the British Columbia Division of Canadian Mental Health Association in 1957; elected to the National Board of Directors of the association in 1960. In 1962 Mr. Guest became chairman of the constitution committee of the organization; in 1965, vice president and in 1966, he became the national president. Mr. Guest was Executive Assistant to the Prime Minister of Canada from 1958 to 1960. Mr. Guest is married, has two children and resides in Vancouver.

I take much pleasure, on behalf of the Committee, in welcoming these two distinguished Canadians to our Committee meeting. You know why we are here, Dr. Griffin and Mr. Guest. Mr. Munro has a private member's bill relating to the situation that people might find themselves in who are unable to instruct counsel and who are charged with a criminal offence of which they may not be guilty. The present procedure, of course, is that under such circumstances there is no trial held and they have this charge hanging over them until they are able to stand trial. We have had before this Committee Mr. Barry Swadron of the Attorney General's Department at Queens Park and we are now looking forward with interest to hearing your views on the subject. Dr. Griffin or Mr. Guest, whichever you prefer?

MR. GOWAN T. GUEST (*National President, Canadian Mental Health Association*): Mr. Chairman, thank you very much for your courtesy in inviting me here. I am not sure that we will be as useful to the Committee as we would like to be. I should say that we represent both our own association which is the Canadian Mental Health Association and, at their request, our sister association, the Canadian Association for Retarded Children.

This problem which you are considering, sir, is one which is of particular importance and concern to our sister association. They, quite frankly, have come to grips with it in a more effective manner than we have. They instruct us and authorize us to tell you that Mr. Munro's bill has been specifically considered by their national board of directors and specifically endorsed. Unfortunately, I must tell you that in our association we have had under way for over a year a study which we entitled Law and Mental Disorder. Unhappily a voluntary citizen organization works even more slowly, with respect, sir, than governments and other institutions in our country, the problem being when you give 12 days of something to an association of this kind you do not get things done quickly. We find ourselves in our group with a detailed study, including the particular subject, under way but not expected to culminate until February and not to be published until next summer. Nevertheless Dr. Griffin and I are in a position to answer questions of your members and, on the understanding that our colleagues on our national scientific planning council may or may not place us in a minority when their conclusions are reached, we can give you an indication of the support of our associations for this bill.

I think it correct to say that there is no doubt of an endorsement of the bill as far as we are concerned. It would simply be a matter of particular detail, and

specifically I mean our discussions at the moment are concerned with whether, indeed, Mr. Munro goes far enough when he suggests that the trial on the fitness issue should be held at the time the Crown's case has been completed.

The suggestion within our association receiving consideration at the moment and the personal recommendation which Dr. Griffin and I would bring to you are that while the bill gives an opportunity for the two particular defences of identity and alibi to be presented during or as a part of the Crown's case, we see no logical reason why the procedure should not be structured to enable counsel for the accused in his judgment to introduce the whole of the defence. It might be a plea of self defence or any other of the recognized defences. It is our feeling that the philosophical or basic reason why this is good legislation is that if a man is by reason of his mental illness or his retardation and his incapacity, unable to effectively instruct counsel he presumably gives his counsel a certain degree of instruction that that counsel in essence if not in actual words comes to the end of the defence case and then says, in effect, to the court: "I have put forward all the defence of which my client is able to instruct me. There may be more. I cannot know because this man is unfit to instruct me." He may not have made full answers. But on the basis of the answer that has been made the matter could then go to the jury or be determined by the court which could return a verdict acquitting on the basis of such answer as has been made or alternately refusing to acquit and then following the procedure which is now adopted that when the man does eventually become fit to stand trial and instruct counsel the trial continues.

Now, with those preliminaries, sir, I would like to defer to your questioning as to comments which Dr. Griffin would make. I might only put on the record again that we have been asked to appear before you on behalf of our sister association of the Canadian Association of Retarded Children and we do so with their specific instruction that they have actually considered this bill and endorsed it, and would be happy to see its adoption by the Parliament of Canada.

The CHAIRMAN: Thank you very much, indeed, Mr. Guest. Dr. Griffin would you like to add to what Mr. Guest has said?

Dr. JOHN D. GRIFFIN (*General Director, Canadian Mental Health Association*): Thank you, Mr. Chairman. I would like to simply add to the record some information about these two organizations which we represent. The Canadian Association for Retarded Children has a membership of some 25,000 Canadians and is organized in ten of our provinces and Bermuda and the Northwest Territories. They have some 305 local associations as part of their national constellation.

The Canadian Mental Health Association has some 100,000 members. It also is organized in all ten provinces with provincial associations, and it has more than 100 local associations in various communities across the country. This gives you some idea of the kind of public interest and support that Mr. Munro's bill might be expected to have. These are the people who have indicated their interest in retardation and mental illness.

It might also be of some interest to the committee, sir, to indicate roughly the extent to which disabilities of this kind exist in Canada. As far as mental retardation is concerned, there is excellent scientific support for the statement that 3 per cent of the population are clinically and socially retarded. I would say

that from the mental illness point of view, again 3 per cent of the population, roughly speaking, are totally incapacitated because of mental illness. I take it for granted that the Committee understands the difference between mental retardation and mental illness. Retardation is a condition usually present at birth, usually due to congenital causes but not necessarily only because of these. It can be produced by a disease or damage to the brain but the result is a lowered learning capacity, a slower rate of maturation and a definite retardation of learning and intelligence. This is a condition not likely to improve in the lifetime of the individual and of course handicaps him most severely in such learning situations as school work or learning a trade. Many of the retarded people can learn simple routine tasks and become reasonably independent people in the community; independent because they can work at these routine jobs.

As far as mental illness is concerned, this is a tremendous problem because illness is a vague term. It extends all the way from those who are completely disabled, incapacitated, and I have indicated that these amount to 3 per cent, and it ranges in severity down to those of us—and you note I say those of us—who may be here this morning. There is little or no evidence of mental illness or emotional disability but the range is very subtle and it is very great.

We are concerned here this morning only with the extreme degrees of mental illness which are disabling as with retardation.

Now, having said that, you see we are dealing then with about 6 per cent of the population. One has to accept the fact that not all of these people by any means are presently in hospitals or in institutions. Perhaps as few as 75,000 of our population are actually in an institution or mental hospital or a training school for the retarded. This means that the vast majority of these handicapped people are living with varying degrees of success in the community. That means these people are as subject as anyone else, but not necessarily more subject than anyone else, to difficulties in their social behaviour. They are as prone as but not more prone than others to become involved in crime. So we can say then that Mr. Munro's bill would apply particularly to a group of people that could be as large as say, a million people in our population, over a million probably. That gives you some idea of the extent of the problem, the nature of our association and I would suggest, Mr. Chairman, that we now make ourselves available to you and your Committee with reference to any questions you would like to ask us, either of our association or of the problem of mental illness.

The CHAIRMAN: Thank you very much, Dr. Griffin, Mr. Guest, Mr. Tolmie and then Mr. Guay have questions.

Mr. TOLMIE: Doctor, what has always bothered me is one simple fact. You mentioned that there are thousands of people involved in the mental health organizations. This is quite true but is there not a very glaring lack of trained psychiatrists? I bring this up because I went down to St. Vincent de Paul penitentiary and found out that they have one part time psychiatrist for 90 inmates. If we are going to do anything constructive, to my way of thinking, we have to get to the root of the problem and see that more psychiatrists are trained and made available not only to the prison population but to people at large. What bothers me is the length of the course. I understand you have to take a medical course first. It is not possible, as in many courses, to shorten them and get right down to the meat. In other words perhaps the medical aspect of the

course could be curtailed. I know from practising law that we take many courses which later in life certainly are not very helpful. I think it is about time that we abbreviated some of these courses, made them available to many more people and graduate more psychiatrists. I would like to get some indication from you on how we could tackle the root problem, that is, making available people who can help people.

MR. GRIFFIN: Yes sir. Thank you for that question, in the process of which you have put your finger on one of our chief problems in the mental health field in Canada. The 100,000 members of our association by no means should be understood to be professionally trained people. These are citizens, laymen for the most part. We do have a group of professional people, most of them psychiatrists, but also including psychologists,—they are non-medical—and social workers and teachers and lawyers and others who are professionally qualified with a special competence in the mental health field as our advisers.

Now, to come specifically to your question, we have now in Canada about one psychiatrist for every 20,000 of the population. There is a need for one psychiatrist for every 7,000 to 10,000, in other words, more than twice the number that we have now. The universities of Canada through their medical faculties and their psychiatric departments of medical faculties are now all geared to train psychiatrists. This is, as you have indicated, a post graduate training. You have to be a qualified medical doctor first and then the specialist training, like any other specialty in medicine, is added to the training period after that. In the case of psychiatry it is a four year training period, at least.

Now, you have asked, is it not possible to shorten this training. Indeed, sir, this is something which our medical schools are very seriously considering now, not necessarily the shortening of the training of specialists but the shortening of the training of doctors, condensing it somehow. Of course, what has happened in the past is that there is more and more and more information, technical knowledge and so on that has to be assembled and assimilated by the young doctor. It seems as though it is a never ending and hopeless proposition unless we do something to shorten this and reverse the trend. Nobody wants to train half-baked doctors and especially do we not want to have half-baked psychiatrists in this country. So the solution, it seems to me, sir—at least one solution—is to bend our efforts toward the training not of psychiatrists but of the psychiatrist's professional team mates, colleagues, the psychiatric social worker the clinical psychologist, and so on. Now, these two particularly do not have to go through the length of time in training as does the psychiatrist. It could be easier and take a shorter time to increase the number of these people to work with the psychiatrist under the general aegis of medicine, let us say, but working as professional colleagues with the psychiatrist and the medical men, and thus expand the field of work of psychiatry. This, I think, is what we will have to come to with reference to such things as helping people who are in trouble with the courts, and so on.

I would suggest, however, that when it comes to expert testimony in court, which is one of the things you are concerned with indirectly here, the advisable course would be to make sure that you have the best qualified persons always available for this, namely, the psychiatrist himself.

Mr. TOLMIE: Doctor, just to follow this up very briefly, I think we all realize that a very small percentage perhaps are mentally ill from a clinical standpoint but there is a great body of people who are consumed with neuroses and complexities and various anxieties, I think this includes all of us. I think the main contribution people like yourself or psychologists can make is to relieve the great volume of anxieties and complexes.

You mentioned that it may be very difficult to produce enough psychiatrists because it is a very specialized field. You mentioned we should have more clinical psychologists and more psychiatric social workers. This is the sphere I think we should be working in, and I was wondering—you mentioned this is a good thing—what steps can be taken? Why, for example, could not courses be instituted in our universities to increase the number of clinical psychologists because this is the need as I see it. Sure, we need psychiatrists and I think very strongly that the course could be shortened but in the meantime I think it would be doing the country a great service—this is perhaps a little off the bill but I think it is a very important subject—if we did increase the number of trained technicians who would be available in clinics where the general populace, not just a few who perhaps could be identified as mentally ill, but a great many of us, and I include myself and perhaps many people we know, could go, I think this would be a real service.

Mr. GRIFFIN: Well, sir, I would just like to call the attention of the Committee to projects which are under way right now that are in this direction. The University of British Columbia is working to develop a health sciences building and a health sciences constellation of courses; all worked into one setting, where the doctor, the nurse, the psychologist, the social worker, the occupational therapist, for example, will all receive training together and learn right from the beginning to work as a team. Is this not right, Mr. Guest?

Mr. GUEST: Yes.

Mr. GRIFFIN: This is the sort of thing that has captured the imagination of many of the young vigorous deans of medicine that are coming forward now across the country. The same kind of concept, different in little ways, is being developed at McMaster University in Hamilton. I think that these universities are prepared to provide training in clinical psychology and social work as you have suggested. It is a question now of educating the sources of support so that the support is enhanced, increased, and most of this comes from governments, as you know. It is also a question of educating, or, shall we say, interesting the population at large, the public, so we will have an increasing desire by bright young people to enter these professions.

Incidentally, the C.M.H.A. and I suspect, the C.A.R.C., these two organizations we represent today, are both working in both of these fields.

Mr. TOLMIE: This is very satisfying to me because I think there is a real need in this particular field.

The CHAIRMAN: Mr. Guay. Then Mr. Munro, the sponsor of the bill is here and after Mr. Guay I am going to ask him to make whatever comments he wants.

(Translation)

Mr. GUAY: Mr. Chairman, I would like to bring up a question of privilege. I wish to congratulate those who organized our trip to Detroit because of the way

everything went. I know we were very lucky to have an interpreter with us which impressed our hosts considerably. Once again we were able to prove we were living in a truly bilingual country.

My question is the following: one of the associations could answer me. How many crimes are committed by mentally ill people? What is the proportion of those crimes? What do you do when a crime is committed by a retarded person? That, of course is another question which flows from the first.

(English)

The CHAIRMAN: Dr. Griffin or Mr. Guest?

Mr. GUEST: Mr. Chairman, I think Dr. Griffin is probably the person to give you accurate information, if any. But I think the answer to the question, sir, is that there are no statistics, that we know of, available on this material and that it is an assumption for which I have no statistical support at all. The prevalence of crime among the proportion of the population which suffers from mental illness or mental retardation is no different from the general prevalence of crime. If the assumption is correct that there is no greater prevalence of crime among people who have a disability than among the ordinary population, then whatever is the ordinary percentage of the population that finds itself involved in the criminal courts would be the same proportion of the 6 per cent, or one million Canadians, who do suffer from these disabilities.

Now, it might be reasonable to say, well, but people with this disability—you may argue subjectively contrary to what is really my subjective argument—are more likely because of their lack of understanding to get involved in criminal offences. That may be so but I think one must then offset that with the fact that they do not have quite the same opportunity for participation in the community. Many of these people are hospitalized or institutionalized, so I think the answer to your question, sir, must be that we do not have statistics that would show this, but we do not think it would be significantly different from the ordinary portion of people that become involved with the criminal courts.

Mr. MUNRO: May I ask a supplementary on that, Mr. Chairman? With this matter of the issue concerning fitness to stand trial being administered the way it is under the present Criminal Code provisions, it is very difficult to know from any examination of the records of convictions of people having committed a criminal offence whether in fact anyone suffering from any type of mental illness has, in fact, committed a crime. As I understand it, it is one of the defects this bill goes some way to correct. In most cases the issue of fitness to stand trial is determined at the beginning or commencement of the trial itself. If the court should find the accused is not fit to stand trial or in other words is not fit to instruct counsel, then the case does not proceed and there is no determination whether the person in question has in fact committed the crime. From that point of view it would be difficult to gather any type of statistical information at all; certainly not from any study of convictions in this country.

Mr. GUEST: I think that is quite sound, sir. I agree with you completely.

The CHAIRMAN: Dr. Griffin, do you wish to comment on that?

Mr. GRIFFIN: No; I would like simply to endorse the statement which Mr. Guest made. We are, in fact, without statistics, without scientific information on this point. It is a very important point and difficult to assess, however. May I just

remind the Committee members that the extreme cases are easily spotted, the person who is obviously mentally disordered, who is demented or bizarre in his behaviour—these are terms frequently used—can be recognized very easily and it is not very difficult to convince a jury that such a person is unfit to stand trial. He does not get to trial. The point of this bill, however, is that he may be unfit from that point of view but did he actually commit the crime of which he is being charged, as you have pointed out. May I also point out that there is a reverse on this problem too. There are many people who obviously have committed the crime whose personality is certainly disturbed, who are socially maladjusted people, but where the psychiatrist cannot say clearly that he is mentally ill in the sense that any lay person or jury would agree. This is a very difficult group of people. These are often loosely classed as psychopathic personalities.

(Translation)

Mr. GUAY: Would it be possible to know, sir, if, when a crime has been committed—or several crimes have been committed—whether you, at the end of the year, would carry out research in the files of these criminals in order to determine what could possibly be the mental condition which has driven them to these acts? Is any research done in this field? Do I make myself clear?

(English)

Mr. GUEST: Thank you; it is, sir. We are not, and by "we" I speak as President of the Canadian Mental Health Association. I am sorry that I do not have that information in respect of the Canadian Association for Retarded Children. They are the group that is concerned with the mentally deficient portion of the population. Many citizens ask, why do you have all these different associations? but we do have a different interest. We are concerned with illness from which people may recover. Our colleagues are concerned with those who are permanently disabled or retarded. We cannot answer for them. We do not know the details of their research program. I am sorry.

(Translation)

Mr. GUAY: I would like to ask what is the purpose of your Association? That was the last question I was going to ask.

(English)

Mr. GUEST: Our association, as opposed to the retarded children's association, is concerned in really four fields of activity. We use the R.S.V.P. as a way of keeping it straight in our own minds. Our primary concern is to encourage, and to our limited extent, subsidize research into the causes of mental illness. That is one category. Our second category is what we call social action. That involves our presence here today; our presence later this day in front of another committee concerned with another topic; our submission to provincial governments concerning conditions in hospitals. There are those who might say that social action is another word for lobbying. We do not think it is quite the same thing because it is not all directed toward governments. It is directed toward other institutions as well to ask them to act in advancement of the interest of those who are or may be mentally ill.

Our third category, sir, is in what we call volunteer services. It runs from the sponsorship of sheltered workshops in various communities where patients can work for six months when they come out of a hospital before going on to their normal occupations again, to what we call White Cross centres which are a social club for people who have come out of the hospital; the volunteer groups that go to visit patients in the hospital to bring comforts and accommodation to them while in hospital; our Christmas gift program which may or may not arise in your community.

Our fourth category of activity is described by us as public education which unfriendly people might say is our propaganda campaign. It is an attempt to inform the public in respect of the field in which we are interested and to interpret it to the public and the needs of these people as best we can. So we are concerned across the country and the emphasis varies from province to province with research, social action or government activities, our own direct or volunteer services to the mentally and with a public education program.

Mr. GRIFFIN: May I add just one word. I think this relates to your previous question, not to the last question. The research which the Canadian Mental Health Association is presently engaged on may throw additional light on this problem. We are studying, as Mr. Guest indicated a few minutes ago, the whole field of the law and mental disorder. There will be published a final report in a few months, less than a year, which will be divided into three parts. The first deals with hospitals and hospital care. The second deals with the civil and personal liberty of patients who are suffering from mental disorder, and the third, which concerns this Committee most nearly, most particularly, is the one we are working on now namely the criminal process itself. I anticipate that some, if not all, of the questions which you have raised here, will come under the purview of this part of the research and study.

May I also say another thing about the relationship and program of the retarded children's association and the mental health association. It is true that people very commonly ask why two organizations? Indeed, there is some question even in our own minds why there should be two. We actually often work as one. Our presence here today is an example of the kind of close and friendly collaboration which exists between these two organizations. Another example, we have our friends from the retarded children's association working with us on our national scientific planning council and we work with them on theirs. In another project we have a commission on emotional and learning disorders of children which we are both jointly sponsoring. So, in many ways we are working very closely together. But, in fact, the support of the two associations comes basically from people who have a very precise interest either in mental retardation or in mental illness but very seldom in both.

The CHAIRMAN: Mr. Mather and then Mr. Choquette, and Mr. Munro.

Mr. MATHER: Mr. Chairman, keeping the proposals of Mr. Munro's bill in mind, I have two or three short questions I want to ask. The gentlemen have told me that over one million Canadians are definitely mentally handicapped. I do not know what phrase would cover both the aspects they bring forward but I would say definitely mentally handicapped over one million Canadians. It seems to me to be a very large section of our population. I wondered, does this million figure represent a substantial increase in recent years or does it to some degree

represent an increased awareness and knowledge of the situation, thereby establishing this statistic?

Mr. GRIFFIN: Mr. Chairman, may I answer this question? This almost entirely represents an increased awareness, an increase in our special knowledge of the existence of these conditions and of our skill in diagnosing them. I have already indicated that by no means are all of these people in custody, if I can use that horrible term. Not all of them, by any means are in hospital. Only a very small proportion of them need that kind of day to day 24-hour care and supervision. The vast majority of these million or more Canadians are, of course, living in the community with varying degrees of dependency.

Mr. MATHER: Does your study of the problem indicate an increase in mental disorder or mentally handicapped people, for instance?

Mr. GRIFFIN: Only in the case of children, sir. The evidence is strong and clear now that there are increased numbers of children and adolescents suffering from emotional and mental disorders. We have reason to believe this is an absolute increase and not just one due to increased public awareness or parental awareness or of scientific skill.

Mr. MATHER: Have you figures to indicate how Canada stands in this affliction with regard to some other countries?

Mr. GRIFFIN: Yes, sir. We can compare Canada most particularly with the United States, the United Kingdom and certain other European countries. A study was recently completed of Soviet Russia and the figures from Russia are very difficult to get and even more difficult to interpret. But in terms of the incidence and prevalence of mental illness we are running just about the same as the United States and the United Kingdom: no more, no less.

Mr. MATHER: I understand that both you gentlemen personally support the proposals contained in Mr. Munro's bill.

Mr. MUNRO: Mr. Chairman, may I just interject for a moment? I just wondered whether Mr. Guest did in fact suggest we go further than this bill? I came in a little late.

Mr. GUEST: That is correct, sir. My statement earlier was that the sister association had specifically studied and specifically endorsed Mr. Munro's bill and our association had, as a part of the more detailed study of law and mental disorder to which Dr. Griffen referred, namely the particular problem under study by Mr. Swadron and others, who are members of our committee, I have no doubt from my participation in conversations with the men who are working on it, endorsed Mr. Munro's bill at least as far as it goes. At the present time on my colleagues, my colleagues on the lay side as opposed to the psychiatric side of the association, come to the fore in a matter of this kind because a number of them are lawyers. The last discussion I sat in on, on Mr. Munro's bill, was whether it should be cut off at the defences of alibi and identity, as he does in his subclause 3, or is there any logical reason why the accused should not be given a procedure by which his counsel can introduce all the evidence which the accused does have. In other words, the issue of fitness to stand trial could be postponed to the conclusion of the case for the defence, well to the conclusion of the representation of evidence, if any; that it be tried at the point preceding argument.

Mr. MATHER: Would you say that the bill, even as drafted, would represent a step in the right direction?

Mr. GUEST: Very clearly, without reservations.

Mr. GRIFFIN: Oh, yes.

The CHAIRMAN: Is that all, Mr. Mather?

Mr. MATHER: Yes, thank you, Mr. Chairman.

Mr. GRIFFIN: Mr. Choquette and then Mr. Ryan.

(Translation)

Mr. CHOQUETTE: Mr. Chairman, psychiatry has done a great deal in diagnosing mental disorders. Can you give us some statistical indication of the part played by psychiatry in achieving cures, because often somebody is entrusted to the care of a psychiatrist for the whole of his life. What I would like to know is whether there are any statistics which can show the incidence of cure by means of psychiatry?

(English)

Mr. GRIFFIN: Mr. Chairman, may I say the psychiatrists are as interested in this as are our honoured friend. We are collecting statistics on this very point now. It is correct to say that no longer is it inevitable for a person who has been committed to a mental hospital with a serious mental illness, no longer is it essential and necessary for him to spend the rest of his life in a mental hospital. This is obvious. We have examples of many patients who have been in hospital a number of years who have now, under new methods of treatment, recovered sufficiently to be able to go home. Now, what is true for the patient who is admitted in the usual way to mental hospital care is also true of course for those who are unfit to stand trial and find their way into a mental hospital by virtue of Lieutenant Governor's warrant. Many of these people, as I can testify from personal experience, and I know that Dr. Barry Boyd has also said this, do recover but, of course, cannot be discharged without authority of the Attorney General or some legal authority which in most cases would bring them back to trial. So this is the big difficulty which Mr. Munro's bill is trying to get at.

(Translation)

Mr. CHOQUETTE: It is not cases of obsession which are so characteristic among schizophrenics. These people who have moments of lucidity, I would even say that they are lucid most of the time. But at any particular moment, they may have an obsession. Consequently, they may commit a crime and then they are subjected to psychiatric and medical examination. Psychoanalysis may show that the person is normal but has obsessions. Is this abnormal, is abnormal and has obsessions. He may, then be released from hospital. Sooner or later the same obsession will return and there is still no solution. Are there any cases like that?

(English)

Do you get my point?

Mr. GRIFFIN: Yes, thank you. I think this is a difficult question. What you are asking is whether it is not true that a person may have a period when he is

seized by a compulsive desire or obsession to commit a crime, to kill somebody, for example, and he actually does this and subsequently, a day, a week, a month later this is passed away and he looks perfectly normal. But is he not subject to such recurrent attacks? And is he therefore not dangerous and should he not be locked up anyway to protect society?

May I say in answer to this that these cases are extraordinarily rare. I have never personally encountered a case that was normal except for the occasional times when he is mad or obsessed to the point where he goes into a fury and kills somebody. This does happen. I do admit this does happen but it is up to the psychiatrist who is studying this case to make an assessment, a medical assessment, of the danger involved in discharging such a case, and when the person is examined in a mental hospital and it is recognized that he does have these periods, then in my experience the responsible medical staff, the medical superintendent, protect society. This is one of their most important responsibilities, to protect society against this person. He is likely to remain in that hospital. Now this does not happen very often. In the mental hospital at Penetanguishene in Ontario where all of these so-called criminally insane are presently looked after,—I do not think, I am guessing, I really do not know this—it is my understanding they have fewer than half a dozen such people out of several hundred.

(Translation)

Mr. CHOQUETTE: It is my impression that you will have to add some refinement to this answer. First of all you are speaking of a moment of madness which leads to murder. I admit that such cases are rare, but cases of schizophrenia are more frequent than ever, and the schizophrenic does not necessarily commit murder. He may commit some other crime. Such cases are quite frequent, more so than ever before. You have in fact given us statistics to show the truly alarming number of citizens who are afflicted with mental disorders. Could you not say that schizophrenia is today possibly the most frequent illness?

(English)

Mr. GRIFFIN: It is the most important, the most difficult and the most commonly encountered serious mental illness that we have. It accounts for about half of all the patients in mental hospitals. But, sir, schizophrenia is not characterized by that type of periodic impulsive antisocial behaviour. It is not. Some schizophrenics will show this but this is not a characteristic. It is not a symptom, a prime symptom, if you understand me, of schizophrenia. It is more likely to be a symptom of a type of epileptic character disorder. That is very rare indeed compared with schizophrenia. In other words, what I am saying is that if a man is seriously ill with schizophrenia, so much so that he represents an occasional hazard to society, then he is sick all the time and there will be no question about him ever being released to society. I am quite sure of that.

(Translation)

Mr. CHOQUETTE: I wonder if I am in this line of questioning?

The CHAIRMAN: Oh, yes, go right ahead.

Mr. CHOQUETTE: Schizophrenia, you say, is the most important type of mental affliction—50 per cent of those treated for mental disorder are schizophrenics. You did say that?

(English)

Mr. GRIFFIN: Half of all the people who are in a hospital; half the population in a hospital, right.

(Translation)

Mr. CHOQUETTE: Yes, I understand. Is not schizophrenia described as a splitting of the personality. Is it not characterized by a persecution complex.

(English)

Mr. GRIFFIN: No, sir. I am afraid I could not agree with this. Schizophrenia is often misinterpreted as split personality. This calls forth in the minds of people two personalities that, you know, one takes over from another. This is not characteristic of schizophrenia at all. Schizophrenia could more accurately be described as a fractured personality, a broken up personality, you know, as a glass is broken up, not into two sheets but into a whole lot of little fragments. This is the kind of picture you see in the personality of an acute disturbed schizophrenic.

(Translation)

Mr. CHOQUETTE: What is the behaviour of a schizophrenic, the average one?

(English)

Mr. GRIFFIN: Well, let me say that the early signs of schizophrenia, which are the important things as far as we are concerned, are a progressive retreat from reality, where a person goes progressively more and more into his own fantasy life, retreats from having anything whatever to do with the social world. He hallucinates; he hears voices; he sees visions; he is deluded. He will be sometimes quite, as they say, paranoid. He will have delusions of persecution. This means he thinks people are against him.

(Translation)

Mr. CHOQUETTE: That is what I was saying just now. There is a persecution complex, right?

(English)

Mr. GRIFFIN: This is a persecution complex but this is one of the symptoms of schizophrenia which occurs not in every schizophrenic patient by any means, not by any means. You cannot say that if a person has a persecution complex this is schizophrenia. You cannot say that either. Some schizophrenics have a delusion of persecution. Not everybody who has a persecution feeling is a schizophrenic. This is a matter of technical jargon, really. They are both sick. Let us face it.

(Translation)

Mr. CHOQUETTE: I do not want to delay the Committee unduly, Mr. Chairman, but this is what I am getting at. Are modern methods sufficiently developed

to enable you to establish with a minimum of precision, that this or that patient, who is normal most of the time, will one day be stricken by a fatal illusion, and that from that point on should be deprived of his freedom? Has science progressed to that point?

(English)

Mr. GRIFFIN: May I answer that this way. I think that we have progressed to the point, Mr. Chairman, where it is possible to say in the case of any given patient that the likelihood of this patient getting involved in a crime is no more or less than that of the average citizen. Therefore, there is no greater risk in letting him go than would be the case in letting go any member of this Committee. We cannot say, and we cannot pretend to be gods and to predict accurately that no one, even in this Committee, will never commit a crime.

(Translation)

Mr. CHOQUETTE: That is it. Psychiatry is concerned with diagnosis, but you cannot establish the incidence of cures achieved by psychiatry. A heart specialist can say that in so many cases, an operation will succeed. He will say: In this case, I know it will be so, but in another case, there is no possibility of success. How can specialists say that? It is because it is a more exact science than psychiatry, which is so often the opium of the people.

(English)

Mr. GRIFFIN: Well there is an element. This is correct up to a point. I mean medicine is not an exact science. The doctor cannot ever be sure even in the case of an apparently successful operation that his patient is going to recover. Things can happen that we cannot predict. What I think we are concerned with here is the sensible procedure in cases where there is abundant evidence to show that the person is at least as well as people who have never been ill and who are living outside hospital. We cannot predict what they are going to do either. Now, I will say that in the case of a person who has even a good possibility of behaving the way you are afraid he might behave because of his illness no superintendent of a hospital will discharge him. They are constantly alert to their responsibilities. But they have, through experience and through their assessment, been able to judge which cases are likely to be free of this and which are still a hazard. This is a matter of human judgment still, but it is a good one.

(Translation)

Mr. CHOQUETTE: What I wanted to get you to say was that psychiatry is a less accurate science than the others.

(English)

Mr. GRIFFIN: It is not any less accurate than internal medicine or surgery; it is less accurate than physics. I would point out that physics is damned inaccurate sometimes.

(Translation)

Mr. CHOQUETTE: My last question. Would you agree that sometimes the best psychiatrist could be somebody who has not studied psychiatry; he might be

best one for a particular patient, because the mentally ill person is sometimes somebody who needs comfort, so he wants somebody in whom he has confidence, much more than somebody who has studied the matter, who knows all the terminology of psychiatry, but in the last analysis can achieve no cure.

(English)

Mr. GRIFFIN: I will concede that willingly and enthusiastically. However, may I add the rider that you are dealing here with treatment, not with diagnosis. I think your psychiatrist would still be the best person to decide whether this patient is going to get better or is better rather than the layman. May I add that I would like to have you on my psychiatric team.

(Translation)

Mr. CHOQUETTE: I apologize for taking up the time of the Committee.

Mr. GUAY: Can I ask a supplementary question? Along the same lines as the questions asked by Mr. Choquette.

The CHAIRMAN: Yes, go ahead, Mr. Guay.

Mr. GUAY: Is your association concerned with prevention, relief or cure?

(English)

Mr. GUEST: Yes, sir. We are concerned with all those things but we are not ourselves involved in the administering of treatment. We are a lay association. Mr. Griffin, who is our permanent staff man, happens to be a psychiatrist. We have a good many psychiatrists who are members of our association and we have their advice on study committees of the kind to which I referred earlier but we do not undertake treatment of cure. We leave that to the psychiatrists in the proper framework. However, in a broad sense we are concerned with all the fields you mentioned. We would be prepared to support a research project, for example, which would result in a finding that if the House of Commons was abolished and we had only provincial governments in Canada everybody would be mentally healthy, this being prevention. I take obviously an absurd and I hope not flippant illustration. But we would be concerned with finding preventive means. We would also be concerned with a research project into the use of a particular drug in the treatment of a particular disease such as niacin. In fact we are concerned in project of that kind at the moment. So we concern ourselves with all these things but we do not administer the treatment.

Mr. MUNRO: May I ask a supplementary? This is perhaps for Dr. Griffin. All this questioning concerning degree—of mental illness and so on—perhaps Mr. Guest could help out on this—is not really strictly pertinent or relevant to this particular bill, in this sense. I put it to you that this bill desires to prevent the institutions that administer justice in this country from being used to incarcerate people without giving them a right to trial. This is applicable, irrespective of whether they are mentally retarded or suffering from any degree of mental illness. In other words, incarcerating those people who because of their mental illness may constitute some type of danger to society is left for other means in our society; other mechanisms that can be resorted to, to treat those people and take them out of society. But there should not be a perversion of the criminal

process to prevent the accused person from having the right to consent being used as one of the means to do that. Would you speak on that?

Mr. GUEST: Yes, sir. I would adopt that approach. It does, however, direct attention to the one aspect of the bill which is, frankly, troubling to me and is a point which I intend to ask those much more learned than I in these matters and our association to consider. It is fair to say, sir, that although I was presented to you as a lawyer I know about as much about criminal law as my psychiatrist friend does about orthopedics. He may have studied it at school but he has not practiced it for years. So I must be careful not to purport to be familiar or an experienced practitioner in this field.

However, because of the use of the word "insanity". I am troubled. The word "disability" might perhaps be a more satisfactory word here because defining insanity is a very difficult thing. If it is defined as it is defined elsewhere in the Code at the present time, including the phrase which I find personally repulsive phrase "natural imbecility", then the word "insanity" may take in those who are the concern of our sister organization, the retarded population. But what troubles me is that if the word "insanity" is as it is in contemporary life, with certain exceptions, including the Criminal Code, defined to refer to illness, then I wonder whether the natural imbecile, to revert to the old word the retarded person is not deprived of recourse to Section 524, as per your amendment. I wonder whether the retarded person who just simply has no idea what is going on around him has advantage from this section. I construct a fictional example of a retarded man—you see we have an association for retarded children, but children grow up, they did not use to be recognized—who walks into a bank. He wants some money. He has his friends write him out a note saying "give me \$100". He walks in and stands there and puts the note down. He is not really sure of what is happening around him and the teller who was robbed last week is frightened and she hits the panic button and she says, "this man had a gun. The poor fellow is not aware of what has happened at all; he just simply went, because he found it difficult to communicate, with a note to the bank teller. He might find himself charged. His problem is an I.Q. limitation. But he is covered by the bill.

Mr. MUNRO: The legal opinion is that the way to include everybody for coverage in this would be to use the same definition as is presently in the Criminal Code without having to get into a series of amendments redefining insanity, which will involve a great deal more in terms of expert testimony which may delay for some considerable time the implementation of this particular remedy.

Mr. GUEST: Then, my concern, sir, is removed. I am grateful to hear that comment from you because I knew you had a bill, I believe it is No. 105, before this Committee dealing with that subject. Thank you.

The CHAIRMAN: Mr. Ryan, Mr. MacEwan and then Mr. Grafftey.

Mr. RYAN: Mr. Chairman, I would like to ask a few questions of Dr. Griffith. First of all, doctor, I believe you stated, or possibly I am paraphrasing you, that it is relatively easy to spot both retarded and mentally incapacitated cases that are charged before the courts. Are you speaking as a psychiatrist or would that be just as easy for the layman to do, in your opinion?

Mr. GRIFFIN: I did not mean that it was easy in cases that were charged before the court. I said that the clearcut cases were easy to spot. This is a necessary and obvious statement, but so many times people say: "How can you tell when people are retarded or mentally ill?" The expert in clearcut cases has no difficulty whatever. Where the problem comes in is in the borderline cases. It is a question of how much illness and how much retardation there is. This, then, becomes a very difficult diagnostic question.

Mr. RYAN: I suppose that the psychiatrist would have in some cases to see an accused man more frequently or for a longer period than he would with another?

Mr. GRIFFIN: If there is a real problem in the diagnosis. Most psychiatrists would like to have this patient under surveillance, under study for several days, in a hospital preferably, where they can observe his day by day behaviour.

Mr. RYAN: So it would be fair to say, I would take it, that a magistrate or a lawyer or a police officer or a layman of any type, in respect to a psychiatrist, would have some difficulty, in at least a large area, in assessing whether an accused should be examined.

Mr. GRIFFIN: A layman might have difficulty in deciding satisfactorily whether a man is mentally disabled or not. This is absolutely true.

Mr. RYAN: You have had a long and illustrious career as a psychiatrist, doctor. I take it, therefore, that at some time in your career you have been often before the courts as a witness? Has this been the case?

Mr. GRIFFIN: Yes.

Mr. RYAN: As you are now on the permanent staff of an institution, are you called upon to testify frequently or not?

Mr. GRIFFIN: Not so much now, occasionally.

Mr. RYAN: We lawyers who are here have some experience with the procedure that an accused man has to face when he is charged. It makes a big difference. There are about five different areas an accused can be thrown into depending upon the type of his crime or misdemeanor. If it is a very serious offence he may face a supreme court judge and a jury. If it is less serious he may go before either a county court judge or a county court judge and jury. Coming down the scale, he may face a magistrate on a summary trial or a summary conviction for a minor offence. I would take it that your association with the courts would be in connection with the more serious crimes rather than with the misdemeanors or minor offences?

Mr. GRIFFIN: Yes; we are now talking about psychiatrists in general. I do not claim to be an expert in forensic psychiatry. I really am not. I had some experience in the courts, as you indicated. This was some time ago. The last experience I had was about a year ago.

Mr. RYAN: Would you be in the higher courts in the main, or in the lower courts?

Mr. GRIFFIN: This was actually in a magistrate's court.

Mr. RYAN: In a magistrate's court?

Mr. GRIFFIN: Yes.

Mr. RYAN: In this particular case how did the reference come to you?

Mr. GRIFFIN: Well, it was of some interest. I do not know whether the Committee would be interested in an account of this but—

Mr. RYAN: Just relate it.

Mr. GRIFFIN: It actually concerned a person who had been annoying a citizen and his wife through watching—I think you call it abetting—

Mr. RYAN: Besetting.

Mr. GRIFFIN: Besetting, and he had been making indecent remarks and suggestions about the wife of this person and the citizen had laid complaint before the police. The police would not or could not arrest him. Nobody would do anything, in fact. The man happened to be a tradesman who at one time had been employed by the person he was now annoying. He was a plumber, in fact. In the end they came to see me to see what they should do.

Mr. RYAN: Which side did they approach come, from the plumber?

Mr. GRIFFIN: The people who were being annoyed.

Mr. RYAN: A private source.

Mr. GRIFFIN: Yes; and I suggested that under these circumstances the best way for them to proceed was for them to lay an information that in their opinion this person was mentally ill. Perhaps we could get this then referred to psychiatric treatment. I was concerned with getting this man into treatment. There was no way that I could see how he could be apprehended and forced into treatment unless we could bring it up through this legal way. It was in this connection that I gave testimony. In fact this man was not certifiable—do you understand what I mean?

Mr. RYAN: Yes.

Mr. GRIFFIN: But he was sick, as the magistrate conceded. He was sick but not crazy.

Mr. RYAN: This was the only manifestation you could tie into in this case to get a remedy.

Mr. GRIFFIN: That is right.

Mr. RYAN: Yes. Now, in the more serious type of charges, it seems to me there is quite a good protection existing for the accused. He is arrested by the officers; his case is gone over by the Crown attorney. He appears for a preliminary hearing and he almost invariably has defence counsel on a more serious charge. At the preliminary hearing the evidence is laid out against him. If it is a prima facie case it goes one step further to a grand jury and then often the man is released. If an alibi comes to light or a case of mistaken identity comes to light he can get off at any one of these stages. Or, he can come up for trial and be found unfit without anything coming to light that might release him as not being

guilty at all, but it is rather unusual. Usually if something like that does come to light the defence counsel can speak to the Crown attorney and the man is released at the time of the grand jury hearings. Or, he may even be released at the preliminary hearing. Or, if he is suspected of mental illness of any kind he has got a good chance of being put in a psychiatric hospital for a week or two for examination. He has all these safeguards. I think in the more serious charges the chance of a man getting through are very slim. But we do know that it does happen and that once he is incarcerated in a criminal insane asylum he has a hard time getting out because a writ of habeas corpus apparently will not be issued even to hear his case. He has to get before the Lieutenant Governor and the attorney general of the province, and he may still be not certifiable, but he may still be innocent of the crime that may be demonstrable. So this bill will help.

Mr. GRIFFIN: The thing about that is that so many of these people are perfectly able to live outside the hospital, even though they are incapacitated, but once they get into this position, then they are taken into the hospital whether or not they can live outside and the issue of whether he is guilty of the crime is never tried.

Mr. RYAN: This does not happen too often. I think where the situation arises probably more frequently is in the less serious offences. What I am concerned about mainly is the man who does not even have a lawyer and who may be either mentally retarded or mentally incapable and yet he comes to court; he probably does not get a chance at all to have a lawyer. It is much easier to rush him through a quick summary conviction trial and put him in for a few days and let him out again than it is to run the risk of committing him for life in a criminal insane asylum. I was wondering if there is not some way we could cover this area with this bill as well. It seems to me to be the larger and even more serious area. Could we make it mandatory to have an examination of suspected mental cases and make it mandatory that they have a defence counsel present, and possibly help make this bill a little broader. I wonder what the initiator of the bill, Mr. Munro, would think of that? Would it be too complicated to get into that area? You have Section 524 (3) providing that the court, judge or magistrate may at the request of counsel for the accused and in his discretion if he deems it to be in the interest of the accused call any witness on the issue of the identification of the accused and on the issue of whether the accused could have been present, and so on. But if he does not have a defence counsel the bill is going to be weakened, I submit.

Mr. MUNRO: Well, it is just a question of what the new legal aid process in Ontario means, whether in all these cases they would not have a lawyer, in any event, and whether you could put in statutes that it be mandatory that whenever a judge at any time during an undefended action in a criminal proceedings suspects it he could remand the case and direct that the accused obtain counsel. Whether that is within the jurisdiction of the federal government in terms of an amendment to the Criminal Code or whether that is not a part of the administration of justice and within provincial jurisdiction, I do not know. But, I rather

suspect that it is not a thing you can include in the Criminal Code but rather it concerns administration of justice itself rather than amendments to the Criminal Code, setting out limits of offences and the ingredients of particular offences. Such a recommendation as the one Mr. Ryan is suggesting should go to the various attorney generals. I do not think that it is within the jurisdiction of the federal government to include such an amendment in the Criminal Code.

Mr. RYAN: The clause here is permissive, in any event; it says that the magistrate may do it. But the magistrate may not be the best judge of whether a suspect is a mental case or not.

The CHAIRMAN: Maybe we could leave this until the Committee meets to draft its report. It is a very important subject you are bringing up, Mr. Ryan. I do not know whether Dr. Griffin cares to enter into that type of questioning. Certainly, I think we all have a sympathetic approach to it. Both Mr. Guest and Dr. Griffin have said they support Mr. Munro's bill. In fact, they think that he probably has not gone quite far enough and the Canadian Association for Retarded Children approve it 100 per cent. Mr. Guest put in a reserve that while it had been studied by his association they had not yet made a definite pronouncement on it. He expressed his own personal opinion. Now, Mr. MacEwan and Mr. Grafftey, I know have questions. I do not know whether Mr. Aiken has a question or not?

Mr. MACEWAN: I have a question.

The CHAIRMAN: Yes.

Mr. MACEWAN: I wanted to ask Mr. Guest, in the course of studying Mr. Munro's bill and the whole subject whether he has obtained any information on how the criminal procedure insanity act which was enacted in the United Kingdom has worked in the United Kingdom; that is, whether the committee studying this bill have received any results by way of statistics or otherwise on how this act has worked in the United Kingdom?

Mr. GUEST: I do not believe we have information on that point beyond what little indication Mr. Swadron I think gave this committee in his testimony. Our only inquiry in connection with the English bill, sir, has been made with the co-operation of or through the aegis of Mr. Swadron who is a member of our committee. I believe he appeared before you on July 7, and as far as I know, from a conversation with Mr. Swadron yesterday, he has had no further factual information from Britain that he did not have at that time.

Mr. GRAFFTEY: Mr. Chairman, first in outline, I think after listening to the part of the testimony I heard and a perusal of my colleague's bill, it would certainly seem that it is making a very good beginning in this field. I have a very general question I would like to ask Dr. Griffin and Mr. Guest. While we have two such distinguished witnesses here I am compelled to ask them this general question which I think impinges on this bill today and the general subject. I would simply like to ask you, doctor, are we many years behind the times in terms of rehabilitating prisoners and protecting the public, because we are not providing needed facilities? There is a serious, in your view, shortage of psychia-

ric personnel. In other words, we are not using the knowledge we have already gained in the technique and we are not spending enough public and private research dollars. There are four general questions there. Do you think we could be doing more in terms of protecting the public and rehabilitating prisoners by making sure as legislators there is more personnel; enabling you to implement knowledge you already have, and that we should be spending more private and public research dollars in order to carry out these general aims.

Mr. GRIFFIN: Yes; I think the answer is in the affirmative to all those questions. We need more psychiatrists working in the Department of Justice in all its branches including the provincial as well as federal administrations. It has been pointed out frequently that working in a penitentiary is not a very popular career for psychiatrists and it is hard to get them to specialize in this. However, it has been our feeling all along that when the opportunity is provided for really doing something significant, for really making a change in even such an archaic institution as a jail and a penitentiary, there are lots of people who are interested and will come forth and do this.

We are short of psychiatrists, as I have indicated before, in almost every field. The first field to be filled when psychiatrists become available, of course, is the attractive field of private practice. This is what is happening. Psychiatrists instead of going into mental hospital work or into community service work, clinics or into the forensic side of psychiatry with penitentiary inmates and rehabilitation of criminals, and so on, are preferring the more remunerative side of private practice. So we must do our best to make other fields of psychiatry a little more attractive. This can be done by a simple device. Psychiatrists are interested in expanding the variety of their work, and most psychiatrists would be most interested in taking a part time post for part of their income from a Department of Justice type of setting. This is one way we can proceed.

Another way is to build up in our universities departments of forensic psychiatry. This has happened at the University of Toronto, for example. It has also happened at McGill. It is in one if not both of the French medical schools, in Montreal and Montréal. So it is coming. This is a coming field, and when you say, are we not neglecting this? comparatively we are but we are neglecting so many things in this country that it is hard to say just this more than the others. I do not know if this answers your question, but this is what I meant by saying that I could agree with your concern in all of these points.

Mr. GRAFFTEY: I want to be very brief in my question. Those of us who are concerned entirely with you in what we are talking about in treating the prisoner and rehabilitating him, and simultaneously protecting the public invariably are faced with the classical public reaction that we are molycoddling the prisoners. This is really a black and white public relations job. What can we do as legislators, apart from making speeches and that sort of thing, to convince the public that it is in their interest that prisoners receive treatment and we spend many public dollars for this sort of thing.

Mr. GUEST: Is it not cheaper, sir to cure them and get them out? It costs less than keeping them locked up. As a layman, not a psychiatrist, that is the kind of language I understand. Laymen are taxpayers spelled backwards.

Mr. GRAFFTEY: I think you are entirely right, yet unfortunately, we all realize that we as legislators only react sometimes under public pressure. It seems to me that we have a great job of work in convincing the public that \$ spent in assisting a prisoner could save an awful lot in terms of carnage and more public expenditures later.

Mr. GRIFFIN: I think the preventive field is most important. If you can keep a prisoner—perhaps a guilty person who is convicted of a crime—out of prison but under productive operation as a citizen, under surveillance, perhaps, it is a much better way to protect the public and to rehabilitate the prisoner than to put him in jail where he rots for a while.

Mr. GRAFFTEY: Just one last question, doctor, in your experience in this very important field have you witnessed a slight improvement in public attitudes toward what you are trying to do over, let us say, the last five or six or seven years?

Mr. GRIFFIN: Yes sir. I would say it was quite reassuring. I was going to say dramatic but it is not quite that good. There is still a lot of stigma in the public mind about mental illness. Now, an interesting and subtle change has occurred. Most citizens will acknowledge that mental illness is an illness nowadays: that the experts can treat mental illness successfully. This they know. But, when it comes down to a member of their own family or their own child being involved in this they are just as emotionally upset by this event as if they had not known anything about it. They feel just as badly as if they still thought it was an act of God or a blight or a stigma and a disgrace.

Mr. MUNRO: Mr. Chairman, I just want to clear up a couple of things. I think, Dr. Griffin, you indicated one million Canadians would be—

Mr. GRIFFIN: It would be 6 per cent of the population. Figure it out. That would be a little more, say, 1,200,000, if you want to be precise.

Mr. GUEST: What we said, sir, was 3 per cent of the population is reliably estimated to be suffering from deficiency or retardation and 3 per cent of the population is reliably estimated to be suffering psychotic or serious mental illnesses.

Mr. MUNRO: So say one half of this estimated 1,200,000 would be considered in a general accepted usage of the words mentally retarded?

Mr. GUEST: Yes, sir.

Mr. MUNRO: That rather figures out to something in the order of one every eighteen persons in Canada, as I understand it, could be under the present legislation—

Mr. GRIFFIN: Retarded people would be one in ninety.

Mr. MUNRO: I am speaking of the whole field. One in every eighteen persons could under the present legislation be denied any right to a trial once they are charged.

Mr. GRIFFIN: That is right.

Mr. MUNRO: Now, the suggestion by Mr. Guest that the bill could go further, as I understand, breaks down into two categories. First, to include here self-defence along with alibi and identification in the terms of the witnesses, that the trial judge would have discretion to call, or, on the other hand, just allowing the case for the defence to be presented and then allow the trial judge either to take it away from the jury and direct and acquittal or no acquittal? Is that right?

Mr. GUEST: Almost, sir; my reference to self-defence was by way of illustration. The only issue to which the conversations and studies in which I participated directed themselves were whether it should allow the whole defence to go in, in the course of the argument whether Mr. Munro should have permitted the whole defence or not. Our group studying it made reference to self-defence. I do not think I should be interpreted, sir, as having suggested the specific addition of self-defence to your subsection (3); rather, that the procedure be so structured that the whole defence could go in because there is a case to be made for the argument that logically why pick out two defences. Why restrict it at all? Let the accused put to the court, through his counsel, as full an answer as he is capable of, and why limit it simply, as we understand was done in England, or has been done in your bill, to those two matters.

Mr. MUNRO: I see. Dr. Griffin, we have had some evidence before the Committee that a great many people are incarcerated now in mental institutions, the criminally insane and otherwise, who in the opinion of experts such as yourself are now ready to go back into society. Because of the reluctance of the law enforcement agencies to have them brought back into society, they are kept in these institutions at a time when the institutions could use the available space for treating others. Do you know just how serious this problem is and how much space these people are taking up?

Mr. GRIFFIN: No, I do not; I am sorry. We could obtain this information for the Committee very quickly, but at the moment, without the statistical manuals at hand, I cannot give you this information; but it is available.

Mr. MUNRO: It has been stated that some of the reluctance to let these people come back into society, despite all the evidence indicating they should be released, is that they have been in there for five or six years or ten years; they would have to be brought back to trial; many of the witnesses that would be called in the original case have either died or gone away, and it is very difficult for the Crown to restructure a case that they never presented in the first place, because the issue of fitness to stand trial was preliminary. It is because of many of these administrative deficiencies that many of these people are kept in past their time. Can you render any opinion on that?

Mr. GRIFFIN: Only that I understand from my associates who are working with this that this is, in fact, true. The Attorney General's department is most reluctant to facilitate the discharge of these patients when they have no case against them. They are discharged back to trial you see, and there is no case any more so it would mean they would be at liberty and they feel they are guilty. But they have never been tried.

Mr. MUNRO: Do you foresee any possibility under the present bill where after the evidence was heard, the trial judge would be satisfied that the accused in fact did not commit the crime and direct an acquittal; yet in the process there would be some question raised in his mind as to his fitness, his mental capacity? Do you foresee that occurring?

Mr. GRIFFIN: This is something we were discussing yesterday, and I wondered then, and I still do not know, what the answer would be. Suppose the judge is satisfied that the person should be acquitted of the charge but is still concerned about his mental status. Can he not then say, well, regardless of whether this person is fit to stand trial, he should be committed. Whether he then can change his role and commit him as a judge on the matter of insanity or mental illness is something of which I am not sure.

Mr. MUNRO: This is really the only question that has been raised in any sense of opposition to this particular bill. My question to you is, on most statute books of provincial administrations throughout this country are there not remedies, other provisions of provincial statutes that a judge can resort to, to take action in this regard and have the person incarcerated without resorting to what in fact is a perversion of the criminal process?

Mr. GRIFFIN: I would feel that under these circumstances the person should be acquitted and let the ordinary civil action proceed. If he in fact is mentally ill and a danger to himself and others, and refuses to go to hospital for the treatment he needs, then he can be committed in the same way that people are committed now. There are other procedures for that.

Mr. GUEST: May I briefly comment, sir, that if a person is observed in a court room to be obviously mentally ill, whether he be in the spectators' gallery or in the dock, one would assume that responsible public officials, be it the prosecutor or perhaps even the court, the magistrate or the judge, or the defence counsel, would see that recourse was had to the appropriate mental hospital statute of the province and for committal, or confinement is a broader word, pursuant to the normal matter. You can take suddenly mentally ill anywhere. If it happened to you when you were in the court room as a spectator or as a prisoner in the dock your committal should be under the same procedure.

Mr. MUNRO: But in any case by adopting this amendment at least that accused who is eventually going to wind up incarcerated because he is suffering from a mental illness of incapacity will have had the charge dispensed with and a determination of his guilt or innocence on a particular charge? Is that not correct?

Mr. GUEST: That is correct, and in addition he will have recourse to the civil liberties sections of the various applicable provincial statutes. In my own province, for example, there is an appeal board to which he can apply for discharge if he is unhappy or his family can apply, and so on.

Mr. RYAN: You do not have a writ of habeas corpus?

Mr. GUEST: Yes.

Mr. GRIFFIN: There is another point here that I think is important and that is having the evidence recorded would provide the psychiatrist, even if he does

end up finally as unfit to stand trial, with some tangible evidence to judge his dangerous condition to society.

Mr. MUNRO: That was going to be my next question, Dr. Griffin. It has been suggested the psychiatrists treating these people in institutions are severely handicapped because they never have had the evidence adduced laid before them that prompted the person to be referred to them in the first place.

Mr. GRIFFIN: That is right.

Mr. MUNRO: And, by adopting this procedure their capabilities would be enhanced in terms of treating the particular accused.

Mr. GRIFFIN: That is right.

The CHAIRMAN: Gentlemen, if there are no more questions we will adjourn the meeting. Before doing so, I want to thank Mr. Guest, the President of the Canadian Mental Health Association and Dr. Griffin, for their appearance here today, for the information they have given us, for the very thorough—the what shall we tell it—over the average information on this subject matter which otherwise we could not obtain. It will be of great benefit to us. I have allowed the questions, perhaps, to stray from the substance of the bill and I did that because of their initial statement that they approved of the bill. We got a lot of very valuable information which was incidental but very, very important. On behalf of the Committee I want to thank you, Mr. Guest and Dr. Griffin, most sincerely for your attendance here today.

Mr. GUEST: Mr. Chairman, thank you very much.

The CHAIRMAN: The meeting is adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 23

TUESDAY, DECEMBER 13, 1966

Respecting the subject-matter of
Private Member's Notice of Motion No. 32

WITNESSES:

From the Department of Transport: Mr. J. R. Baldwin, Deputy Minister;
Mr. Eric Winsor, Director of Airports and Field Operations; and
Mr. A. J. Watson, Research and Programming Division, Civil Aviation.
From the Canadian Airline Pilots Association: Captain P. C. Hamilton,
President; and Captain W. J. Rodgers, Director, Technical and Air
Safety Division.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (High Park)
Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,

(Quorum 10)

Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, December 13, 1966.
(27)

The Standing Committee on Justice and Legal Affairs met this day at 9.45 a.m. The Chairman, Mr. Cameron presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Forest, Guay, MacEwan, Mather, McQuaid, Nielsen, Pugh, Ryan, Tolmie, Wahn, Whelan (13).

In attendance: From the Department of Transport: Mr. J. R. Baldwin, Deputy Minister; Mr. Eric Winsor, Director of Airports and Field operations; Mr. A. J. Watson, Research and Programming Division, Civil Aviation.

From the Canadian Airline Pilots Association: Captain P.C. Hamilton, President; Mr. Cleve Kidd, Executive Vice-President; Captain N. R. White, First Vice-President; Mr. Charles H. Simpson, Treasurer; Captain W. J. Rodgers, Director, Technical and Air Safety Division; Mr. Malcolm Brown, Research Assistant.

The Chairman introduced the officials from the Department of Transport and invited the Deputy Minister to make a statement.

The Committee then proceeded to the questioning of the witnesses.

The Chairman drew to the attention of the Committee that a member of the audience was recording the proceedings, and ordered that the tape be placed in the hands of the Clerk of the Committee.

Agreed,—That The Relationship between Airline Sabotage and Air Trip Insurance, and Insurance Concession at Departmental Airports (prepared by The Department of Transport) be made exhibits (See Exhibits 21 and 22 respectively).

At 10.50 a.m., the questioning of the officials from the Department of Transport being completed, the Chairman thanked Messrs. Baldwin, Winsor, and Watson for their kind attendance.

The Chairman introduced the various witnesses from the Canadian Airline Pilots Association, and invited Captain Hamilton to make a statement.

After reading a brief, Captain Hamilton read excerpts of letters from the Presidents of certain airlines. It was agreed by the Committee that he not be required to identify the writers of these letters.

The Committee then proceeded to the questioning of the witnesses.

Agreed,—That Appendix A and Appendix B of the brief of the Canadian Airline Pilots Association be appended to today's proceedings (See Appendices and 16 respectively).

Agreed,—That the DOT Accident Report of the Douglas DC6B, CF-CUQ at 100 Mile House, B.C. on July 8, 1965, and the DOT Accident Report of the Douglas DC-3, CF-CUA, near Quebec, P.Q., on September 9, 1949, be made exhibits (See Exhibits 23 and 24 respectively).

Mr. Nielsen requested the Department of Transport to furnish the Committee with figures relating to relative amounts of revenue received from insurance booths and machines, and a separation of the revenue from rental fees and revenue from the percentage of sales.

At the completion of the questioning, the Chairman thanked the witnesses for their kind attendance and contribution.

At 12.35 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, December 13, 1966.

The CHAIRMAN: Gentlemen, this is a meeting to consider the notice of motion of Mr. Basford relating to the sale of airplane insurance at airports operated by the Department of Transport.

I would like, first of all, to remind the members of the Committee that they indicate to the Clerk whether they will be going to the National Research Council on Tuesday, December 20. Dr. Gibbs, as you will recall, is working on improving a breathalyzer test and we would like to have as many members of the Committee go to the National Research Council for a demonstration of what he is doing. I hope you will remember that and notify Mr. Ray whether you will be able to go or not so that he can make the necessary arrangements.

An hon. MEMBER: Are we supposed to come fortified for actual testing?

The CHAIRMAN: Well, I would think that would be up to the individual members, but it might be a good idea. I am certain that Mr. Mather would like to see it in operation on a fit and proper subject.

Mr. MATHER: Yes.

The CHAIRMAN: I have the honour today to introduce a gentleman who needs no introduction, Mr. J. R. Baldwin, Deputy Minister of Transport. We have all had dealings with Mr. Baldwin from time to time in his capacity as Deputy Minister, and we have always found him very co-operative and extremely capable in the discharge of his duties.

We also have with him Mr. Eric Winsor, Director of Airports and Field Operations, Mr. A. J. Watson of the Research and Programming Division, Civil Aviation, and without further ado I will call upon Mr. Baldwin, if he will be good enough, to state his views in regards to the subject matter of Mr. Basford's motion.

Mr. J. R. BALDWIN (*Deputy Minister of Transport*): Thank you, Mr. Chairman and gentlemen.

The department has put in two documents on the subject that is dealt with Mr. Basford's motion and I believe these have been circulated. One is a brief historical study of how insurance concessions at departmental airports came into being, and what their present general status is. The second is a special report prepared by Mr. Watson last year at a time when this subject was under consideration within the department; and while it does not represent what you might call an official departmental document in the normal sense, we felt that it is a valuable factual contribution. It was a report made for departmental purposes and we felt that it would be of considerable interest to the Committee. It also has been circulated. It is a compendium of information gathered as

best we could on the question of sabotage and the factual relationship between that and airline trip insurance.

Perhaps, Mr. Chairman, it might be useful if I briefly summarized both documents.

The CHAIRMAN: Please do, Mr. Baldwin.

Mr. BALDWIN: The first document, which is the historical presentation, indicates that the practice of providing insurance at airports for the travelling public first originated as a result of public demand through the airlines themselves, and that the airlines themselves took the initial step of providing this type of service. Eventually it became for the airlines something of a problem from the point of view of administrative organization. The vending machine concept emerged, although at the same time the concept of direct sales, apart from the vending machine, was maintained through the airline. Because of the growth of the public demand for this, the administrative problems that were involved, and because it is the general practice of the department to set up some supervisory and regulatory control over services provided in an airport—this had emerged as one of the services—the formal administrative supervision was taken over by the department itself and, in accordance with its normal practice it was handled on what you might call a concession basis. In other words, we granted the right to appropriate companies to provide vending machines and in due course, as the demand continued, we also moved to the stage where we authorized insurance counters through appropriate firms. The decisions with regard to the provision of these counters were taken within the normal context of our concession policy, namely, calls for tenders and awarding a contract on the basis of the tender calls. We now have a combination of the machines and the counters established fairly universally across the country at our major airports on a controlled concession basis. The demand seems to continue on a fairly substantial rate for the services which these provide.

The rate of growth, which is indicated in the appendix attached to the first document I mentioned, will show that the public demand for this type of service has not been rising as rapidly as the total rate of growth in air traffic, but it has been rising fairly steadily, nevertheless, to a point where in 1965 very close to 400,000 policy units were sold. This is possibly a little less than 10 per cent of the total boarding passengers—perhaps 8 per cent—that moved through airports in that particular year. The concession fees amounted to \$146,000 in the fiscal year 1964-65. I think, using round figures and assuming a normal calendar year, was slightly over \$150,000 during last year. It was a bit higher this year. It was, still, I may say, somewhat lower than the revenue we get from coin toilets. The position of the department on this has not been either strongly for or strong against. The position of the department has been, with regard to this, as it has been with regard to other services that are closely related to aviation, that where there is a substantial public demand for service, all other things being equal, we should attempt to see that the service is made available in a suitable fashion. Of course, the habit of insurance for travel is not new in any sense of the word. It exists in all fields of transport.

Based on that short historical study, I might then move briefly to the second document, which is the report prepared by Mr. Watson last year, as part of his duties within the research and programming branch of the civil aviation section.

of the department. This was prepared at the request of the director of civil aviation because the department, just as this committee has, had received representations to the effect that there was a possibility of some increased public risk resulting from the existence of these concessions. Quite naturally we were very concerned. This was not a new representation. This has come up from time to time in the past but, because of the fact that a number of them came in last year, we felt it would be wise to have a special report made, quite apart from our continuing liaison with this particular problem.

Mr. Watson's report was not based upon any particular original research in this country. It was, rather, an attempt to collect as much available information within and without Canada on this subject as could be collected with regard to the work that was going on in this field elsewhere and the views that existed elsewhere. I suppose the most active area of work that has been current in this field is the work that has been undertaken by the United States federal aviation authorities who have, in fact, over the two or three years previous to this had a special committee working on the subject.

The general review undertaken by Mr. Watson did not suggest that there was any direct correlation between incidence of sabotage in the aircraft field and the availability of the sales of aircraft insurance at airports. In fact, it tended to suggest that there was no such direct correlation and that the existence of the insurance facilities as a service to the public was not increasing the risk of aircraft sabotage, which is very hard to measure in any case in terms of quantum just because the incidence is hard to get at and, as pointed out at the time Mr. Watson made his report, we only had one conclusive case within Canada. I might say in this regard that we have, in our thinking in the department to some extent been influenced by the fact that there does appear to be a substantial continuing demand for facilities of this sort by the public and we have found that if we do not provide the facilities that are wanted by the public they will find them somewhere else in a less, perhaps, convenient form. Nevertheless, they will come into existence to serve the public. The passenger can buy his insurance at the airport, and this is the easiest method for him to employ, but he can obtain it in a variety of other fashions if he so desires, and if it was eliminated from the report those other methods would presumably become more important and more voluminous. The practice of providing insurance at transport terminals exists in other forms of transport, although we recognize that the problem of sabotage in other forms of transport may be less serious in terms of the implications than it is in terms of an aircraft.

Basically, I think the position we would take is that with the findings that have been made through Mr. Watson's report, as pointed out, particularly in the United States, that there does not appear to be any direct correlation between the incidence of aircraft sabotage and the existence of sales of air trip insurance at airports. Basically the position we take is we still feel it is our responsibility to see that this service is provided to the public. If there was any clear evidence that it was increasing the risk for the public in terms of increased sabotage risks we would most certainly be concerned to seek some change in this situation, but hitherto we have not felt that this case has been established.

I mentioned earlier the revenue we receive from these concessions. While this is an important small segment of our total revenues it, of course, is a minor

consideration with regard to the larger issues that are the subject of your consideration.

Basically we are still continuing to keep closely in touch with any further developments that would throw light on this. We have not established any special working committee with the United States Federal Aviation Administration, largely because we have virtual daily contact with that Administration. Washington is only an hour away and there is a constant interchange of visits and telephone calls. We have reason to believe that the views that were expressed in their 1965 special report on this subject which, as I said, indicated no particular correlation here, have not changed. In fact, their present efforts in that area are primarily now centred upon what they think is the more important problem, the problem of how you get at sabotage itself in the aircraft. How can you find the devices or what are the methods of ascertaining whether some explosive material has been put on a plane and what are the various steps that can be taken to improve your technical or inspection capabilities in that regard. I do not think I would wish to add any further comments on the subject matter at this particular stage, Mr. Chairman, other than to indicate that our interest remains very close on the subject, both in terms of the continuing review that is taking place within the civil aviation branch and in assisting and being guided by the work and views of this particular committee on the subject. Mr. Winsor, Mr. Watson and I will do our best to answer any questions that may be raised or bring forward any material that we may not have provided that maybe within our competence. Thank you.

The CHAIRMAN: Thank you very much indeed, Mr. Baldwin. Do you, Mr. Winsor, or you, Mr. Watson, want to add anything to what Mr. Baldwin has said?

Mr. ERIC WINSOR (*Director of Airport and Field Operations*): No, I have nothing to add, sir.

The CHAIRMAN: Then the meeting is open for questions. I see Mr. Pugh has a question.

Mr. PUGH: Mr. Baldwin, I take it from your words that you have not a qualm in the world on this subject. In other words, if there had been a relationship between availability and the trouble in aircraft it would have been looked into most thoroughly, and if there had been any relationship your department would have recommended to the government that these means of selling insurance in airports would have been done away with.

Mr. BALDWIN: That is most certainly the case.

Mr. PUGH: In your mind or in any of the research you have done there is no relationship whatsoever?

Mr. BALDWIN: I would prefer to put it that as far as we can see, because it is hard sometimes to get at the facts here, the case is not established by any means and to the extent that you can reach any conclusion it would point against the fact of the existence of any correlation between the sabotage risk and the availability of insurance.

Mr. PUGH: Is there any record of large amounts of insurance having been sold, other than at the airports, to a person who has been proved to be a saboteur?

Mr. BALDWIN: Mr. Watson might answer this as the insurance expert.

Mr. A. J. WATSON (*Research and Programming Division, Civil Aviation*): I can give you a run down on one case. You probably heard of the case of Julian Frank, who had somewhat over a million dollars worth of insurance on himself when he blew himself out of the tail of an aircraft. He was the only one actually injured in this sabotage attempt. The aircraft landed safely. He had—I can detail it here—\$500,000 straight life insurance with the Continental Life Insurance Company, which he bought in 1959; he had \$10,000 straight life insurance with Massachussets Mutual, also bought in 1959; \$10,000 with National Life Insurance Company, issue date unknown; \$100,000 with the Transportation Accident Insurance Company of North America, bought in November of 1959; \$100,000 transportation accident insurance with the Continental Casualty Company issued on April 20, 1959, and then there were two items of air trip insurance, one for \$62,500 with the Continental Casualty Company and one for \$2,900 with the Fidelity and Casualty Company of New York. Now, altogether he had close to \$1 million of non-air trip insurance, and in the two cases of air trip insurance the policies were not bought at an airport, they were not bought from a coin machine, they were bought from a travel agent. That is about the size of it.

Mr. PUGH: Thank you very much. Many people, Mr. Baldwin, buy accident travel insurance. It is not for a trip or just covering one or two months, they have an annual policy. Is there any record showing that an ordinary policy holder—when I say ordinary, I mean a man who, for instance, goes to an insurance agent or a company and gets himself covered for accidents of all sorts which includes, we will say, \$50,000 for death in an aircraft—has been involved in sabotage at all? Perhaps Mr. Watson may have the answer to that.

Mr. BALDWIN: This would be the extent of data in regard to normal insurance policies sold through normal insurance agents?

Mr. PUGH: Yes, either life insurance or travel accident insurance?

Mr. BALDWIN: As to cases of that sort where we feel sabotage has resulted? I do not know whether there is much data on that. It is pretty hard to get.

Mr. WATSON: There was no relationship to sabotage in that case. In most cases we have found out, by observing this and taking observations at airports, that almost every one has some sort of life insurance permanently but there is a small percentage of people who prefer to take out a little extra insurance when they go on an aircraft. I think this is simply because we were not born with wings. That is only an opinion, though.

Mr. PUGH: The Toronto airport mural—you say you were not born with wings—is not too bad when you really look at it. I have only one more question and it really ties in with the first question I asked. So you feel you are providing service by having vending machines or the sale of travel insurance by other means actually at the airports?

Mr. BALDWIN: We feel that the volume of purchase of business that exists at the present time is indicative of a substantial public demand that should be satisfied in some fashion or another. If we did not satisfy it, it would presumably find other means of satisfying itself in some fashion. But if it is going to be satisfied, and it is directly related to aviation and if there is no increased risk by providing it in airports, why, then, it has been our policy that we should try to provide the public with this service.

The CHAIRMAN: Mr. Tolmie and then Mr. Aiken.

Mr. TOLMIE: Just following along that line of questioning, Mr. Chairman, would it be a fair comment to say that as air travel increases and as corridors become busier that perhaps air travel will be less safe and therefore instead of making insurance more difficult to obtain, the trend should be the other way and we should make it more available?

Mr. BALDWIN: No, I do not think I could agree with that, sir. I think our determined objective in the department and the determined objective of every witness directly related with aviation whom you may hear in this Committee will be to make aviation safer and we believe we are moving in that direction. Now, the growth of traffic that you mentioned, the increased volume, means all sorts of new techniques, new aids, new devices, new control systems, if you will, new competence, if you will, but I remain convinced that it is within our capability and within the capability of the other groups directly concerned, whether the pilots or others, to continue to increase and improve the safety record in the field of aviation even as the volume grows.

The CHAIRMAN: Mr. Tolmie, may I interrupt?

Mr. TOLMIE: Yes.

The CHAIRMAN: Gentlemen, it has been brought to my attention that there is a gentleman in the room with a tape recorder. I would ask that he be good enough to leave the tape with the Clerk of the Committee before he leaves the room. Mr. Tolmie, you may continue.

Mr. NIELSEN: During this interruption, Mr. Chairman, might I, with Mr. Tolmie's permission, simply suggest that it might be more useful if we could hear from a representative of the Canadian Air Transport Association to determine if their views are any different from Mr. Baldwin's so that we could explore more competently the whole spectrum, rather than confining ourselves to one side in our questioning at this time.

The CHAIRMAN: We will consider that at the steering committee meeting. So far we have not—

Mr. NIELSEN: Oh, I thought they were here.

The CHAIRMAN: No, we have the Canadian Air Pilots Association here.

Mr. NIELSEN: That is who I meant.

The CHAIRMAN: Yes. Well, we will be hearing from them after the Department of Transport. I do not think we really want to intertwine the two together. At least, I had not thought of that. It might be an idea. I leave it to the committee to consider that thought. However, we have Mr. Baldwin and his two associates with us, who are here primarily on behalf of the Department of Transport, and I would be glad to have an expression of opinion. We will be hearing from the Canadian Air Pilots Association very shortly. Is that satisfactory, Mr. Nielsen?

Mr. NIELSEN: It was just a suggestion. I thought it might be more helpful to expose both sides, if there are two sides, before we embarked upon our questioning. That is all.

The CHAIRMAN: What do you think, Mr. Baldwin?

Mr. BALDWIN: I am in the hands of the committee, sir.

The CHAIRMAN: I think we will proceed. Perhaps you might remain for a few minutes after the air pilots start and we see how the two of them fit in to each other. Mr. Tolmie will you continue?

Mr. TOLMIE: I am just pursing that a little further and reversing the argument; that if the safety factor is increasing all the time then perhaps insurance availability is not that important?

Mr. BALDWIN: This is, I think, a conclusion that could be drawn from the assumption you have suggested. However, in the department we have also been influenced by what I might call the public service concept and what the public itself considers is necessary. If the public considered insurance was not necessary because of the assumption and conclusion you drew, I think that the concessions would disappear. But even though safety should increase, will increase and has been increasing, in my opinion, the demand still goes on and our concept has been based upon the existence of the demand.

Mr. TOLMIE: As I gathered from your conclusions, there apparently is little, if any, direct relationship between sabotage and availability of flight insurance at the airport itself. As opposed to that, we have the argument that many people travelling, perhaps for the first time, are hurried, excited, they do not take the time to get insurance, they get to the airport and all of a sudden they realize that perhaps it would be a good idea to get insurance. Therefore, if these insurance counters were not available they would not have the opportunity to obtain insurance and you would be denying them something they want and could have. Is that the substance of what you say?

Mr. BALDWIN: I think that is a reasonable statement of the position. This is how it came about in the first instance; the passengers wanted this service and to begin with they tried to get it through the air lines.

Mr. TOLMIE: What, if any, specific case in Canada of airplane sabotage is there which is directly connected with the sale of insurance by one of these machines?

Mr. BALDWIN: I do not think we have established that there has been any specific case in Canada, have we?

Mr. WATSON: There is only one case in Canada so far that has been proven to be even indirectly associated with air travel insurance and this, of course, was the DC-3 in which Mr. Guay sabotaged his wife. Now, his final object was to kill his wife in order to marry his girl friend. He tried to get someone to poison her first and then went to great lengths to find out how to detonate dynamite by electricity, and so on. After he had done that, he took her to the airport and put her on the flight and she bought \$10,000 worth of air trip insurance, but she already had \$20,000 worth of ordinary insurance. Now, even if she had not bought the \$10,000 worth of insurance it would have made no difference. The bomb was already on board the aircraft.

Mr. TOLMIE: But his purpose there was not for material benefit.

Mr. WATSON: No, it was to get rid of the evidence of murdering his wife. This was his main objective.

Mr. TOLMIE: It was incidental profit. That is all.

Mr. WATSON: The transcript did not mention anything about insurance.

Mr. AIKEN: Mr. Chairman, I would like to ask Mr. Baldwin a question. You say the statistics on this particular problem are completely inconclusive one way or another?

Mr. WATSON: Oh, no.

Mr. BALDWIN: No. I would say the quantum measurement is a very difficult thing to apply in a situation of this sort because of the vagaries of the situation. To the extent that you can apply it, the evidence would seem to point in the direction that there is no major or material correlation.

Mr. AIKEN: May I put it this way, then. If there were any evidence that the sale of insurance policies at airports were a factor in any case, would you not agree that it would be better to discontinue them as a commercial matter in the interest of safety?

Mr. BALDWIN: Possibly yes and possibly no. I think I would want to look at the situation, if that evidence were clearly available, and consider it rather carefully in the light of another factor, namely, that if public demand exists it is going to find a means of satisfying itself. If it satisfies itself on an off-airport basis in a material fashion, you are not only removing from the public the availability of the services but they may find themselves satisfied by less reliable insurance operations and organizations. At least we are in a position, in the airport area, to do our best to ensure that the companies that are authorized to come in there have the proper type of policy and are reliable companies. There are a variety of factors that it would be very difficult to weigh, quite frankly, in my opinion, Mr. Aiken.

Mr. AIKEN: To come back to the same question, if there were any evidence would you not feel it would be better to try something else rather than go ahead with the sale of policies at the terminal?

Mr. BALDWIN: What would the "something else" be?

Mr. AIKEN: I have in mind the person who may be mentally unstable and who dreads facing someone at a counter who might recognize him or question him. The anonymity of putting a coin into a machine may help someone in their decision to take insurance and go ahead with a plan they had in mind. I am thinking particularly—and this is personal to most of us here—of the situation of the person who threw the bomb earlier this year. The evidence seems to indicate that a positive factor in this man's decision to throw a bomb into the House of Commons was that someone told him that he could do it, there was not any protection, he could walk right through. I am wondering if it is not the same sort of a situation where a person could anonymously purchase his insurance, and where he might not go ahead with his plan if he had to face somebody?

Mr. BALDWIN: Yes, of course, there is a possibility that that might be the case. On the other hand, this is a pretty speculative operation. I am not sure whether the facing of the individual who is buying at the counter would make that much difference. The counters at the large airports are a pretty anonymous sort of operation with the volume of sales that take place there. As I said, the machines would exist off the airport as well as on the airport, anyway.

Mr. AIKEN: The only comment I have, Mr. Baldwin, is that we took some steps here, and—

Mr. BALDWIN: Yes.

Mr. AIKEN: —I am merely throwing this out as some indication that there was concern about this problem, and that if people were going to have to change their approach it might deter someone from a plan which is being made now.

Mr. WATSON: All I can say to that is that in past history there has never been a case of this. There is only one case where a slightly unbalanced person sabotaged an air line on which his mother was travelling. She had a \$750,000 legacy which he hoped to collect. When they were in the air line terminal she asked him to get her some coin-operated insurance and he went over and tried five times to fill out a form. Finally, on the sixth one, he came back and said he had done it, but the form was only partially filled out and it was invalid. But this was at her request, it had nothing to do with the saboteur.

Mr. AIKEN: Thank you, Mr. Watson.

The CHAIRMAN: Mr. McQuaid and then Mr. Mather.

Mr. MCQUAID: Mr. Chairman, I have a question in connection with the figures in Schedule A. Have you any idea, Mr. Baldwin, how much insurance is represented through those 400,000 customers who bought during 1965?

Mr. BALDWIN: Would we have information as to the total amount of insurance represented by those 400,000 policies?

Mr. WATSON: I have not got the relationship between them. I did the departmental revenues up to 1960.

Mr. BALDWIN: We do not have the dollar value.

Mr. MCQUAID: Would you have any approximation of what the individual policies might be? Would they be over \$5,000? Would they be mostly \$15,000 or \$20,000 policies?

Mr. BALDWIN: I think probably this is information that the insurance companies could provide more easily than we could in the department, sir.

Mr. MCQUAID: I have just one other question, then. In 1965 you had 67,600 machines installed.

Mr. BALDWIN: Those are policies sold through machines.

Mr. MCQUAID: I am sorry. Those are policies sold through machines.

Mr. BALDWIN: Yes.

Mr. MCQUAID: You received a commission of \$147,000, roughly, from those policies. Is that right?

Mr. BALDWIN: No, the \$147,000 was counter space rental, which is related to the figure of policies in total. The machines sold 67,000 policies; 321,000 were sold over counters and 9,000 were sold directly through air lines at the airport.

Mr. MCQUAID: Your department does not look upon this as a particularly lucrative operation?

Mr. BALDWIN: It is not one of our major fields of revenue. It is one of the smaller ones.

Mr. MCQUAID: And you continue it more as a convenience to the travelling public?

Mr. BALDWIN: That is correct, sir.

Mr. McQUAID: That is all, Mr. Chairman.

The CHAIRMAN: Mr. Mather?

Mr. MATHER: Mr. Chairman, we have figures here from the pilots, which will come to shortly, indicating that there were 11 major incidents of air sabotage in North America in the last 17 years, not all of which are linked, apparently, to air flight insurance sales. Nevertheless, if the figures are anywhere nearly correct, 11 successful major sabotage attempts in 17 years is a pretty significant factor in air travel.

The CHAIRMAN: Have you based your question on that?

Mr. MATHER: Yes. I can understand the pilots' concern over a situation of sabotage. Have you received representations in this connection from the public urging investigations or greater steps toward safety?

Mr. BALDWIN: On the basic question of sabotage, yes sir, regularly. Of course, they vary according to whether there has been a recent accident in which this is suspected. We agree that this is an extremely important subject for investigation and an extremely difficult one. As I said, the most extensive work that is going on in this regard—although it exists in many countries—is the work in the United States to which reference is made in Mr. Watson's brief. I think the chief aim is to try to devise methods of finding out somehow whether any attempt at sabotage is being made, particularly in regard to explosives, which seem to be the most common element in this regard, although I believe there have been other curious features in accidents. Mr. Watson, your knowledge of the whole field is much more extensive than mine. There have been cases of individuals who run amok in the plane with guns, and this sort of thing, and take over, though usually that is for a different reason.

Mr. MATHER: Do you have figures on sabotage incidents in air flights in Canada prior to the installation of insurance sales?

Mr. WATSON: There have been only two sabotage events in Canada. One was a DC 3 in 1949 and the other was a DC 6B last year. Those are the only two cases of sabotage.

Mr. MATHER: Your general position is that the department would be quite willing to remove the facilities if it could be proven that insurance sales were a factor in encouraging sabotage?

Mr. BALDWIN: I think we would have to reconsider our position on this. It is not the speculation that it might be, but the fact that it is a factor. This would be the important thing to know, in our opinion.

Mr. MATHER: Thank you.

The CHAIRMAN: Mr. Tolmie, do you have a question?

Mr. TOLMIE: I was wondering about other countries such as Britain, West Germany, Sweden, and so on. Do they sell flight insurance over the counter or through machines?

Mr. BALDWIN: So far as I know, most of the major countries permit the various types of sales that are available in this country through machines, over the counter, through air lines—and they have the same mechanisms off the air.

port as exist in this country. It can be bought through a travel agency or an insurance agency, and so on.

Mr. TOLMIE: Are you aware of any concerted effort to remove these machines in other countries?

Mr. WATSON: The F. A. Committee on airline sabotage began when someone made a representation that perhaps these sabotage incidents were related to machines. Investigations usually come about as the result of sensational newspaper or magazines articles referring to "jackpots of death" and so on. It was something like that which brought the F.A. Committee into being, and the F.A. Committee finally came to the conclusion, as previously stated, that there is no evidence that past attempts at sabotage, either successful or unsuccessful, would not have occurred had there not been insurance available at airports. Also, there is no evidence that future attempts at sabotage would be prevented by removing insurance availability from airports.

Mr. TOLMIE: Yes, I realize that. I was wondering if this problem had presented itself in other countries such as Britain, Germany, and so on?

Mr. WATSON: There is no complete record on that, sir. From the normal review I am not aware of any major interest in this, but we would really have to make a more detailed search to answer your question.

Mr. TOLMIE: Is there any proposed legislation that you know of?

Mr. WATSON: There is none that I am aware of at the present time.

The CHAIRMAN: Mr. Nielsen, have you any questions?

Mr. NIELSEN: Yes, I have. Would you agree or disagree, Mr. Baldwin, that flight insurance as sold in airports is a principal causative factor of sabotage in airline disasters?

Mr. BALDWIN: Pardon?

Mr. NIELSEN: Would you agree or disagree with that statement? It is a statement contained in the brief of the Canadian Airline Pilots Association.

Mr. BALDWIN: I do not think that we have seen that brief yet.

Mr. NIELSEN: Is it possible for you to answer that question now?

Mr. BALDWIN: I think the evidence I have already given, sir, would be the answer. We do not think the facts would substantiate a statement of that sort, but I would really feel happier, in commenting on the brief, if I could see it as a whole.

Mr. NIELSEN: Yes. Well, that is one of the reasons why I suggested earlier that we hear both sides so we could have this kind of discussion. Would you now whether airport vended trip insurance is the most prevalent type of air insurance coverage used by air travellers in Canada?

Mr. BALDWIN: Do you mean trip insurance sold at the airport as distinct from off the airport?

Mr. NIELSEN: Yes.

Mr. BALDWIN: I would be inclined to agree that trip insurance policies sold at the airport would be larger in total than off the airport for the simple reason that this is the most convenient method for the public to obtain them.

Mr. NIELSEN: Mr. Baldwin, you made the statement that persons who buy this type of insurance at terminals across the country where machines or booths are set up constitute approximately 8 per cent of the total users. Is that correct?

Mr. BALDWIN: I am not sure whether you could say that the users are 8 per cent of the total boarding passengers, but the number of trip policies sold is roughly 8 per cent of the total boarding passengers. You may find many repeats, and this is why I say I prefer to express it that way.

Mr. NIELSEN: Assuming this is a fairly accurate gauge, would you consider—in view of that factor and also the fact that this is the most prevalent type of air insurance coverage sold—that it is one of the essentials of providing a public service to serve that segment of the public? Is there a big enough volume, in other words, to consider it imperative?

Mr. BALDWIN: Based upon our general experience with a wide variety of operations and physical facilities within the department, any time there are 8 or 10 per cent of the public wanting something, I say that this is a segment that is quite important to take into account.

Mr. NIELSEN: Would you go further and say as a matter of policy that it would be imperative that this segment of the public be served?

Mr. BALDWIN: It would depend upon whether we felt there was a risk involved or not. If we were satisfied that we were not causing danger by doing this, then I would say that we should consider it our duty to see what we could do to assist the public in this regard.

Mr. NIELSEN: Is it one of the department's conclusions, Mr. Baldwin, that the air traveller will buy more readily from these machines or booths set up at terminals across the country than he will from his insurance broker?

Mr. BALDWIN: I do not think that could be answered categorically one way or the other.

Mr. NIELSEN: Would it be the departmental conclusion that most purchases of trip insurance at air line terminals are of the nature of compulsive purchasing of insurance?

Mr. BALDWIN: This is psychological jargon that I am not sure I understand.

Mr. NIELSEN: I do not mean it to be jargon, Mr. Baldwin, I am trying to arrive at conclusions myself in order to gain the benefit of the department's research into the matter.

Mr. BALDWIN: Do you mean what is known in supermarkets as impulse buying?

Mr. NIELSEN: Yes.

Mr. BALDWIN: I think there would be some element of this but I do not think this would be the largest proportion of it. I would find it rather hard to pass judgment on that. I would think that the majority of people buy insurance because they want it, not on an impulse basis.

Mr. WATSON: In general we found that most of the people who buy insurance are first trippers, people on charter flights going overseas, and things like that, who are most unused to air travel. Personally, I travel a lot and I never buy this trip insurance. I might say I never go on board a commercial airliner.

without thinking that there could be a saboteur on board. I do not think that in relation to insurance, it is more in relation to some screwball.

Mr. NIELSEN: One of the factors which I would like to have analysed either by the department or by other witnesses—but I would like to have the departmental opinion on it—is this, that it seems to me that people who are going to obtain insurance coverage for air travel, if they are thinking about it at all, they are going to see their insurance broker and purchase at the same rates, or virtually the same rates, the equivalent type of insurance, and if they are asking for coverage in the amount of \$100,000 or \$200,000, or less, the normal vendor of insurance or salesman of insurance is simply not going to sell it unless he knows his client very well, but he is going to go into his background. A vending machine cannot do that, and most of the insurance which is sold at these counters make no such inquiries. I am wondering if that facet was the subject of any departmental inquiry?

Mr. BALDWIN: You mean the purchaser of a very large insurance policy and the feasibility or practice, or otherwise, of some information being passed to the air lines when someone comes along and buys a very large trip insurance policy?

Mr. NIELSEN: Yes.

Mr. BALDWIN: Here again, I think that this would be something which would be an interesting question to address to the insurance companies.

Mr. NIELSEN: Has the department done any research in this area?

Mr. BALDWIN: I am not aware of any offhand.

Mr. NIELSEN: I just have one other question.

Mr. BALDWIN: Pardon me, because to the best of our judgment, and again I cannot say it is accurate, I do not think the experience at the airports would be that you sell very large individual policies. The norm, I would guess, is at a relatively low figure.

Mr. NIELSEN: I have just two other questions. First, this brief which I find most interesting, and I am sure Mr. Baldwin and his officials will, apparently recommends exactly the reverse of what the department has recommended and is supported by a resolution of the International Federation of Airline Pilots at Salisbury, Southern Rhodesia, passed in March of 1963. The department, no doubt, is aware of that resolution. In the face of that kind of international consensus it is a little difficult for me to accept the departmental position. I am wondering if the department knows if any other countries which have studied the problem have eliminated this kind of service in their air terminals?

Mr. BALDWIN: We would have to do a major check through our embassies to find out. To the best of my knowledge in the major countries the answer is no. Mr. Watson has reminded me that the F.A.A. study, which we think was the most exhaustive job which was done—the steering committee set up on this question down there—took place about the time of and the period following the resolution which you have mentioned, and to the best of our knowledge they not only considered conditions within the United States but made a pretty exhaustive investigation as to what was happening in other countries at the same time. As I said, to the best of our knowledge action of this sort has not been taken in that we would consider to be the other major aviation countries, but I would

not want to state that categorically. If definitive information was concerned, we would want to have the Department of External Affairs do a round up of all embassies around the world.

Mr. NIELSEN: That gives rise to another question. Have the United States made any changes at all in either the content of what is sold in these machines or at these booths or in the physical set-up itself?

Mr. BALDWIN: Not to the best of my knowledge.

Mr. WATSON: The only thing they are concentrating on now is what they are calling a ticket of obstacles to the saboteur, and they are divorcing that completely from the insurance question.

Mr. PUGH: What do they call this?

Mr. WATSON: A thicket of obstacles to the saboteur. This includes radioactive seeking of dynamite caps and the feasibility of an electronic nose to sniff out dynamite, and so on.

Mr. NIELSEN: This is my last question and it has to do with the document insurance concession at departmental airports. For all of the years you have listed, you have listed the revenue for 1964-1965 as \$677,412. Incidentally, I would be interested in learning what the department's revenue is from coin operated devices of all kinds at airports.

Mr. BALDWIN: Leaving insurance out, the other types of coin operated devices are running something over \$200,000 a year now, are they not, Mr. Winsor?

Mr. NIELSEN: For staff pilots and spectators, things of this sort. Is that gross revenue or a net revenue?

Mr. BALDWIN: This is the concession fee being paid to the department.

Mr. NIELSEN: Are there any costs that are calculated against that gross?

Mr. BALDWIN: No.

Mr. NIELSEN: I have no other questions.

The CHAIRMAN: Thank you very much, Mr. Nielsen. Thank you, Mr. Baldwin.

Mr. PUGH: I have one question I would like to ask, Mr. Chairman. There is good deal of information on the installation of vending machines and the application to enter into the airport business by the companies putting in the booths and counters. You stated that there seemed to be a general demand and that they tried to get this insurance through the air lines. I am just not quite sure on that. Was there a general demand by the public of Canada or was the Department of Transport approached by the companies? What started all this?

Mr. BALDWIN: I think it started at a time when aviation was a far less established method of moving passengers by regular scheduled service than it is today, and it started in terms of the interest of the travellers buying air line tickets and being able to obtain insurance, and the attempts of the air line themselves to start providing this trip insurance through their own sales counters at airports or elsewhere. Then, as I said, as volume grew and administrative problems developed it became something that moved over into the Department

of Transport regulatory field because the air lines were finding it was getting too large for them to handle.

Mr. PUGH: At its inception, though, any demand which the Department of Transport would have from the public would be very small, would you agree?

Mr. BALDWIN: No, it was transferred from an air line responsibility to a Department of Transport responsibility at a time when it was fairly substantial in size.

Mr. NIELSEN: It was for the purpose of encouraging the growth of air travel, was it not?

Mr. BALDWIN: I think this is why the air lines provided it in the first instance.

Mr. PUGH: With regard to airport vending and otherwise, there are no statistics as yet in the Committee on the variable between counter-sold, that is, a person behind a counter, as against the actual vending machines?

Mr. BALDWIN: Counter sales are now substantially larger in volume than the vending machine sales.

Mr. PUGH: Is there any check at all when undue amounts are requested?

Mr. BALDWIN: On undue amounts?

Mr. PUGH: Yes. Do you tell the companies? If you have any undue amount requested that you must give it a second look?

Mr. BALDWIN: We have no knowledge of that information, sir, at all.

Mr. PUGH: No knowledge of the information. Are there any regulations which say something must be done?

Mr. BALDWIN: No, there are not.

Mr. McQUAID: Mr. Baldwin, could not the fact that substantially more insurance is sold over the counter than at vending machines warrant the removal of the vending machines?

Mr. BALDWIN: How many places do we have counters and how many places do we not have counters? Do you know offhand, Mr. Winsor?

Mr. WINSOR: We have counters and machines at seven locations and machines only at 26 locations.

Mr. McQUAID: So that at the seven locations where you have counters you are selling substantially more insurance than you are through the vending machines?

Mr. BALDWIN: Yes.

Mr. McQUAID: Well then, would that not warrant the removal of the vending machines altogether? There is some question as to whether these are a—

Mr. BALDWIN: They are a supplement to the counter sales. At the other points, of course, the volume of business may not be large enough to sustain a counter operation because, to begin with, this is a more expensive operation.

Mr. WATSON: I might say that we found at the places where there were both counters and machines that the machines were only used on the off hours, when the companies cannot afford to have an attendant on duty at the counters.

Mr. PUGH: That leads to a further question. What do you mean by concession in this historical document? Is this really a commission that you receive on the sale of this insurance?

Mr. BALDWIN: A percentage.

Mr. PUGH: Can it be termed what is commonly called in insurance circles a commission as agent for selling this insurance?

Mr. BALDWIN: No, but this is the standard basis on which a number of our airport concessions operate; that we may or may not charge a square foot rent for space, but over and above that we require, as a payment to the department, a percentage of gross revenue. The same thing happens in regard to coffee shops as well as insurance counters, and things like that.

Mr. PUGH: Does it appear on the balance sheet as rental?

Mr. BALDWIN: No, this appears in our own balance sheet as concession fees.

Mr. PUGH: Concession fees. It is lumped with rentals?

Mr. BALDWIN: No. In our presentation of total airport revenue as \$20 million plus, it is lumped in with everything else, but the \$20 million which we receive at our airports would break down into possibly 12 subheadings, one of which would be concession fees for various types of commercial operations.

Mr. NIELSEN: Is that concession fee on a percentage basis, Mr. Baldwin?

Mr. BALDWIN: It is usually, depending on the type of concession—and we are getting outside the purely insurance field—on a percentage basis with guaranteed minimum. That is the normal approach that we take.

Mr. NIELSEN: What is that percentage with respect to booths?

Mr. BALDWIN: To insurance booths?

Mr. NIELSEN: To the seven locations where there are booths?

Mr. BALDWIN: We are concerned with the percentage at the present time. I thought that was in the document we had.

Mr. WINSOR: It varies; it could be up to 13 per cent.

Mr. BALDWIN: It is in the 11 to 13 per cent area.

Mr. NIELSEN: What is it with respect to machines?

Mr. WINSOR: \$12 per month for each machine rental and then 7½ per cent guaranteed of the gross receipts.

Mr. NIELSEN: Is that percentage over and above the \$12 a month?

Mr. BALDWIN: That would be a minimum, would it not?

Mr. WINSOR: The \$12 is the minimum, and 7½ per cent of gross if it exceeds the minimum.

Mr. NIELSEN: What happens here, does the insurance company send you the gross revenue of each machine?

Mr. BALDWIN: They give us a statement.

Mr. NIELSEN: They give you a statement.

Mr. BALDWIN: And we have the right to audit at any time.

The CHAIRMAN: Are there any more questions?

Well then, Mr. Baldwin, Mr. Winsor and Mr. Watson, we wish to thank you very much for your appearance here today and for the information which you have supplied to us. I know, Mr. Baldwin, that you may be called away on important public business but I was going to suggest that Mr. Winsor and Mr. Watson remain. Would this be possible?

Mr. BALDWIN: Yes, they will.

The CHAIRMAN: I wonder if it is agreed that the paper entitled "Insurance Concession at Departmental Airports" and the other paper entitled "The Relationship between Air Lines Sabotage and Trip Insurance" be exhibits A and B to today's proceedings?

Mr. WINSOR: Mr. Chairman, may I make a correction?

The CHAIRMAN: Yes. Mr. Winsor wants to make some corrections.

Mr. WINSOR: Gentlemen, if I may refer you to schedule A, the totals shown under the various headings are incorrect. I would like to correct them now. The total under machines should be \$356,420; under counters, \$1,395,246; under rough air lines, \$42,811 and under total, \$1,794,477. Thank you very much.

The CHAIRMAN: Thank you very much, Mr. Winsor. Now if you and Mr. Watson would sit to one side we will call our other witnesses. You are going to main?

Mr. WATSON: Yes.

The CHAIRMAN: Thank you very much.

Would the representatives from the Canadian Air Line Pilots Association please come forward. Captain Hamilton, will you sit here. We also have Mr. Kidd, Mr. White, Mr. Simpson, Mr. Rogers, and Mr. Malcolm Brown. Please be seated, gentlemen.

I have the privilege of introducing the gentlemen here representing the Canadian Air Line Pilots Association. Captain Hamilton, who is the President, is sitting to my immediate right; Mr. Cleave Kidd, who is the Executive Vice-President is seated next to Mr. Hamilton and, going in order from my right, Captain W. J. Rogers, director of technical and air safety division and Mr. Malcolm Brown, research, assistant. Gentlemen, you may proceed with your presentation. Captain B. C. Hamilton.

Mr. B. C. HAMILTON (*President, Canadian Air Line Pilots Association*): Thank you, Mr. Chairman. This brief is not a long one and I do not feel that I can summarize it because it is really a summary of work and investigations that have been carried out over the last five to ten years, so I am afraid I am going to have to go through the whole brief.

On October 5, 1966 Mr. Ron Basford, member of parliament from Vancouver-Burrard, introduced the following motion in the House of Commons:

That, in the opinion of this House, the government should give consideration to the advisability of amending the government airport concession of operations regulations to provide, by virtue of its powers to regulate the performance of any service for persons on the airport, that no licence be granted by Her Majesty in Right of Canada for the operation of insurance vending machines.

The resolution was unanimously referred to the Standing Committee on Justice and Legal Affairs for its consideration. The Canadian Air Line Pilots Association represents approximately 1100 professional air line pilots who live constantly under the threat of aircraft sabotage. Our members serve as pilots on scheduled air carriers, including Air Canada, Canadian Pacific Airlines Limited, Nordair Limited, Pacific Western Airlines and TransAir Limited.

We wish to thank the members of this Committee for the opportunity to express our views which, we believe, coincide with the views of the majority of those involved in the air transport industry on the hazards of air flight insurance.

We call attention to the fact that this brief is addressed to all types of flight insurance on sale in airports. The resolution under consideration only mentions insurance vending machines. However, we hope that this Committee will also study the possibility of the complete elimination of all types of trip insurance sales in airports.

We would also like to emphasize the unique opportunity which we have in Canada to take a major step forward in this field. Practically all Canadian airports are operated by the federal government. This is not the case in the United States, where jurisdictional difficulties could inhibit the effectiveness of any decision on flight insurance taken at the federal level.

Safety record of civil aviation is a matter of considerable professional pride not only to the pilots, but also to all those associated with this international industry. In a recent paper presented to a joint aviation safety meeting of the American Institute of Aeronautics and Astronautics and the Cornell Guggenheim Aviation Safety Center, hosted by the Canadian Aeronautics and Space Institute in Toronto, Mr. A. Spooner of the International Civil Aviation organization quoted as follows:

I would, in conclusion, like to remind those present that in spite of the somewhat alarmist statements that are made from time to time, air travel is unquestionably safer now than it was either 20 years ago, 30 years ago or even 5 years ago. Fatalities per 100 million passenger miles is an accepted criterion. In this connection it should be noted that the rate has fallen from a figure of 3.11 in 1947 to one of 0.55 in 1965. Put another way; it is almost six times safer to fly a given distance than it was 19 years ago.

At this point we would like to call attention to Appendix A of this brief. This chart shows a comparison between the passenger fatality rate and the growth in passenger traffic between 1945 and 1965.

The primary concern of our Association with these statistics is that the curve representing the passenger fatality rate has tended to fall at a decreasing rate or to level off in the last few years. Our aim is to assist the fatality rate in continuing its fall towards zero.

We are presenting our case to this Committee in an attempt to reduce passenger fatalities caused by aircraft sabotage. We hold that flight insurance sold in airports is a principal causative factor in sabotage.

In 1963 at the time of the Ste. Therese accident, TCA (now Air Canada) carried a \$5½ million Lloyd's of London liability policy and of 110 damage suits since filed—there were 111 passengers but one man's relatives were never heard from—the insurance company and its reinsurers paid out \$3 million. Several of the pay-outs were for more than \$100,000. The largest was for \$198,000 for a widow and her five children.

In the past 15 years, under the Warsaw Convention (an international system of limited liability) average payments by U.S. air lines were \$6,489 for each

passenger killed in an accident. Yet payments outside the agreement (that is, no limit of liability, as for example domestic flights) averaged \$38,499.

On May 16, 1966, 34 air lines, which consisted of 22 non-U.S., including Air Canada, C.P.A. and 12 U.S., agreed to an interim arrangement which provides for a limit of liability for each passenger for death or injury of \$75,000 U.S. inclusive of legal fees and costs, or \$58,000 U.S. exclusive of legal fees or costs on any trip which includes a point in the United States as a point of origin, destination or agreed transit stop. Participation of all air lines in this arrangement was on the basis that the governments of these airlines had no objection to such participation. We can only conclude that the Canadian government approved the action of Air Canada and C.P.A. in this matter.

It is obvious from the above information, however brief, that governments and airlines are conscientiously meeting their obligations to the travelling public. Claims arising from accidents are being settled in a fair and equitable manner. In the light of experience, a question can be posed: what useful purpose is being served by the sale of air trip insurance?

The following descriptions of known sabotage incidents, in which insurance as involved, were largely extracted from the report of the subcommittee on the Relationships of Insurance to Airline Sabotage. This subcommittee established by the United States government reported June 28, 1962 and we have updated its record to include incidents since that date.

September 9, 1949. If I may digress for just a moment, I think that some of the things that we say here will vary in degree perhaps from some of the evidence that was given by the gentlemen from D.O.T. I hope our information is correct. Obviously where we diverge, one of us is wrong. Our information was taken from the report, the name of which I gave you. The very first one is an example of this. September 9, 1949. Quebec, Canada. A DC-3 was exploded in flight by a bomb, resulting in the death of 23 persons. The predominant motive appears to have been murder as a result of a love triangle, but the murderer had taken out a \$10,000 air trip insurance policy on his wife, the victim.

April 17, 1950. Los Angeles, California. A bomb was placed aboard a United Airlines DC-3 which was discovered before take-off. It had been placed aboard to collect \$25,000 worth of air trip insurance which the would-be saboteur had taken out on the lives of his wife and two children who were passengers.

September 24, 1952. Mexico City, Mexico. A bomb exploded in the baggage compartment of a Mexican Airlines DC-3. It had been placed aboard by two men who had insured seven passengers for a total of \$208,000. The precise type of insurance is unknown.

May 9, 1953. Mazatlan, Mexico. A bomb packed in a piece of luggage exploded after removal from a Mexican airliner, killing three airport employees and injuring nine others. The bomb had been placed in the luggage by a passenger in an attempt to commit suicide and leave insurance to his relatives. The amount of insurance was \$300,000. The type of insurance is unknown.

November 1, 1955. Longmont, Colorado. This was the bombing of a United Airlines DC-6 by John Gilbert Graham for the purpose of killing his mother. The primary motivation appears to have been to obtain her estate by inheritance, but she did hold \$37,500 in air trip insurance on her life. Forty-four passengers died in this crash.

July 25, 1957. Daggett, California. A Western Air Lines passenger entered a lavatory, an explosion followed, and the passenger was blown out of the plane (a Convair) and fell to his death. He had taken out \$150,000 in air trip insurance and apparently committed suicide. No other persons were injured.

November 16, 1959. Over the Gulf of Mexico. This was the loss of a National Airlines DC-7 with 42 persons on board in the Gulf of Mexico in which Dr. Spears was listed in the passenger manifest but was later found to be alive. Dr. Spears held a \$100,000 annual accident insurance policy.

July 6, 1960. Bolivia, North Carolina. A national Airlines DC-6B crashed off the coast of North Carolina, as the result of a bomb explosion, with 34 deaths. To date there has been no positive determination of the identity of the person or persons responsible or the motivation. However, one of the passengers, Julian Frank, was insured for approximately \$1 million from all sources. The details of his insurance coverage are as follows. I will omit reading that except that there was \$125,000 worth of air trip insurance.

The CHAIRMAN: Perhaps you had better read it because it will be on the record then and we will not have to make it an exhibit.

Mr. HAMILTON: Very well, Mr. Chairman.

Mr. PUGH: Could we take it as read and put it on the record?

Mr. HAMILTON: Yes.

The CHAIRMAN: I beg your pardon?

Mr. PUGH: Could we just take it as read and put it on the record?

The CHAIRMAN: Well, I do not know how that will work with the tape recorders which we are using. I am informed that it will have to be made an Appendix.

Mr. HAMILTON: I will read it then, Mr. Chairman. It will not take that long.

The details of his insurance coverage are as follows: \$500,000 straight life insurance; Occidental Life Insurance Company; issued November 1, 1959. \$10,000 straight life insurance; Massachusetts Mutual Life Insurance Company issued August 3, 1959. \$10,000 National Service Life Insurance company; issued date unknown. \$100,000 transportation accident insurance; Insurance Company of North America; issued November 14, 1959. \$100,000 transportation accident insurance; Continental Casualty Company; issued April 20, 1959. \$100,000 transportation accident insurance; Continental Casualty Company; issued November 27, 1959. \$62,500 air trip insurance; Continental Casualty Company; issued December 31, 1959. \$62,500 air trip insurance; Fidelity & Casualty Company of New York; issued December 21, 1959. \$62,500; Federal Life & Casualty Company; issued December 31, 1959.

May 22, 1962. Unionville, Missouri. This was the crash of the Continental Airlines 707 jet liner which, according to the newspaper accounts of an FBI report, resulted from a dynamite explosion. Forty-five persons were killed. There was on board a passenger who allegedly had purchased explosives before boarding the aircraft and who also allegedly had taken out some \$300,000 in a trip insurance payable to his wife. The passenger was said to have been despon-

nt and to have talked of killing himself rather than face certain criminal charges pending against him.

May 7, 1964, Danville, California. A Pacific Air Lines plane crashed causing 4 persons to lose their lives. A passenger, Frank Gonzalas, after losing heavily at the gambling tables, purchased \$105,000 in air trip insurance, then boarded the plane and shot the pilots in flight.

July 8, 1965. 100 Mile House, British Columbia. A device exploded in the left lavatory of a Canadian Pacific Airlines DC-6B which blew the tail off the airplane, plunging 46 passengers and a crew of 6 to their deaths. An intensive investigation by the R.C.M.P. has failed to identify those responsible. Sizable amounts of air trip insurance are involved in this accident, with one passenger known to have purchased a \$125,000 policy.

These 11 cases represent the majority of the 18 known or suspected cases of sabotage. Eight of the 11 definitely involved air travel insurance, and in the two cases in Mexico in 1952 and 1953, it is impossible to determine what type of insurance was carried.

We believe that this evidence is sufficient to directly connect insurance with sabotage and to underline airport vended trip insurance as the most prevalent type.

The great temptation to the potential saboteur is that acts of sabotage can go undetected and therefore unpunished. In the case of the C.P.A. DC-3 incident in 1949, it was planned that the explosion would occur over the St. Lawrence River, thus making recovery and examination of the wreckage difficult if not impossible. In the Gonzalas case, if a radio message had not been sent it would have been extremely unlikely that the murder by shooting would have been uncovered. In the 1965 C.P.A. DC-6B crash at 100 Mile House it has not been possible to identify the exact type of explosive used, let alone those responsible.

Two sticks of dynamite or two bullets cannot sink a ship or wreck a train. They can, however, cause the complete destruction of the largest passenger aircraft in service today or even those planned for tomorrow.

In the past it has not been possible to determine the cause of 10 to 15 per cent of aircraft accidents. How many resulted from acts of sabotage will never be known, but without doubt this aspect will constitute an incentive to murder for profit.

At the recent aviation safety meeting in Toronto, see Appendix A, Mr. Jerome Lederer of the Cornell Guggenheim Aviation Safety Centre emphasized the fact that it is well known to all experienced in the field of aircraft accident investigation; seldom is an accident caused by a single factor. Rather, accidents result from a chain of events culminating in the final irreversible occurrence. Mr. Lederer referred to this as the "domino syndrome", in which he likened each tributary act or event to one of a long line of dominoes. As each domino falls it knocks over the next until the whole line is down. At any point, if any of the dominoes is removed the chain reaction is broken, the remaining ones still stand—no accident.

There have been accidents in which the incentive of financial gain through trip insurance have proven to be the first domino to fall or one elsewhere in

the line. CALPA is convinced that by removing this incentive the chain will be broken, and therefore some accidents will never occur.

Air flight insurance has been described as an "invitation to maniacs". Our counterpart organization in the United States, the Air Line Pilots Association has analyzed the dangers of this type of policy as follows:

1. It is easily accessible to anyone regardless of mental or emotional conditions.
2. It requires only a handful of loose change as an investment, making it an attractive gamble.
3. It can be purchased on the spur of the moment.
4. It can be purchased in virtual anonymity.
5. It lacks the screening safeguards normally associated with the sale of other types of insurance.

We would fully concur with these points and go on further to say that, on examination of a typical policy of this type, we are amazed at the lack of limitations placed upon the purchases. In our limited knowledge of the life insurance field we were not aware that any responsible company would issue a policy unless it was clear that the proposed beneficiary had an "insurable interest", normally a financial interest, in the life to be assured. There is no such limitation in these policies.

Regarding the cancellation clauses which nullify the policy, if the purchaser is responsible for the death of an air line passenger this is not a deterrent. First as we have mentioned earlier, sabotage is not always easy to detect and we do not know how many cases of sabotage have gone undetected.

Second, due to this difficulty the saboteur always assumes or hopes that he will get away with it. From our earlier discussion on the 1965 Canadian Pacific Airlines DC-6 incident we can assume that up to date at least one saboteur has gone unpunished.

At the present time every encouragement is offered to the potential saboteur who decides on the spur of the moment to buy a gun, then flight insurance, board an aircraft and murder the pilot in mid-air. With the complete destruction common to such disasters no accident investigation team can establish more than circumstantial evidence of sabotage in this type of case.

Elimination of flight insurance sales at airports will make this spur of the moment decision to sabotage far more unlikely. This will mean that the potential saboteur will have to contact an insurance broker or agent. The only condition under which any responsible broker will immediately provide this coverage is when the client is at present one of his policy holders in good standing or, that is, when some previous investigation of the client's background has been made. Under any other conditions, in the best traditions of the Canadian insurance industry, this applicant will have to be thoroughly investigated. Compare this with present conditions where anyone can walk up to a flight insurance counter and purchase up to \$300,000 of trip insurance, no questions asked.

The United States Air Line Pilots Association has established a committee on air line sabotage which has been studying this problem for several years. One of the primary conclusions of this committee is that "financial gain has figured consistently and prominently in aircraft sabotage; insurance has been by far the

most prevalent, if not the only common denominator, and the predominant insurance vehicle used has been the airport vended insurance".

The examples presented earlier completely substantiate this statement.

In 1960, shortly after the sabotage incident at Bolivia, North Carolina, a joint government-industry conference was called with the co-operation of the United States Federal Aviation Agency. The general consensus of those participating was that it was—

"impossible to relate the amount of insurance taken out by a saboteur to acts of sabotage and that removal of insurance machines or booths from airports would be undesirable since such insurance is a great convenience to travellers and removal would be resented by the average traveller".

This meeting was also of the opinion that any action to eliminate this insurance would encounter many unspecified legal difficulties.

We would strongly attack the assumption that the removal of this insurance from the airport would be resented by the air traveller. In the report of the subcommittee on the relationship of insurance to airline sabotage the insurance representative on this subcommittee made the following estimate based on the experience of his group,

—that about one-sixth of all airline passengers purchase trip insurance, and that about 80 per cent of these purchases are for \$75,000 or less.

If I could digress for a moment here, in view of the figures Mr. Baldwin gave, it seems that our figures here are very, very conservative. He spoke of 8 per cent or in that vicinity.

Even though this was four years ago, we believe a conservative estimate would be that less than 20 per cent of all air line passengers ever purchase this insurance. We are certain that the majority of travellers would not even miss the flight insurance booths or vending machines.

It should also be noted that, since the average purchase buys less than \$75,000, the air carrier would in any case be liable for this amount under the Warsaw Convention on international flights and that normal settlements on disasters involving domestic flights indicate that the passenger's estate would be well provided for.

In this brief we have made no attempt to relate the amount of insurance to acts of sabotage, but we would like to point out that present conditions permit the saboteur to bypass normal screening procedures in purchasing large quantities of insurance.

As to the possible legal or jurisdictional difficulties that were mentioned by the 1960 conference, we repeat that there would appear to be no such difficulties in Canada, with most airports operated by the federal government.

We have also found mention of a 1960 study directed by the U.S. Air Transport Association on the insurance aspects of aircraft bombings. The report of this research was never officially adopted by that Association. Apparently this study found that insurance of all types had been a "primary factor" in a very small percentage of sabotage cases. We trust that the material presented in this brief has established that insurance is a major factor, if not a primary factor in most cases.

Further findings of this study group were related to placing limitations on the amount of trip insurance available. One interesting conclusion was that any reduction in the amount available "would lead to an unjustifiable public inference that the insurance companies lacked confidence in the safety of commercial air transportation." Statements like this do not need argument, however, their presence could be a reason why this report was not adopted by the U.S. Air Transport Association.

An additional study by the Stanford Research Institute was sponsored by the Air Transport Association. The research here seemed to deal exclusively with placing limitations on the amounts of air trip insurance available. The conclusions were that high air trip insurance limits had not been "conclusively" shown to be a "major factor" in aircraft sabotage and that substantial limitation on the amount of insurance which could be sold would work a "great injustice" to innocent persons. We have two comments here. First, regardless of amounts available, airport vended insurance has been a major factor in known sabotage attempts; and, second, only a small minority of air travellers ever purchase this insurance.

We have already quoted extensively from the Report of the Subcommittee on the Relationship of Insurance to Airline Sabotage. This Subcommittee was established by the Steering Committee on Airline Sabotage, which reported to the U.S. Federal Government. Considering the data presented in its report we are surprised that the Subcommittee concluded that air trip insurance should not be eliminated.

In our hesitation to suggest any bias of the Subcommittee members in favour of the insurance industry, we can only assume that much emphasis was placed on that section of the report entitled "Legal Problems Incident to Imposing Restrictions on Insurance". This, as mentioned earlier would not be applicable in Canada.

This Association is not aware of any significant breakthrough having been made in the field of bomb detection. We have seen reference in a recent magazine article to a bomb "sniffer" developed by the Illinois Institute of Technology Research Institute sponsored by the Federal Aviation Agency. This is a device which tests a sample of air taken from the baggage and passenger compartments for characteristic vapors from explosives. The equipment is at present being tested.

Apparently no similar research project has been undertaken in Canada and we would suggest that such a device could make a worthwhile contribution to the prevention of sabotage. Of course, even with such equipment, we could not entirely eliminate sabotage. This would still not prevent a saboteur from buying a gun and shooting the pilots.

We would like to state clearly that while our ultimate goal is the total elimination of sabotage, this is not possible to achieve within the bounds of present day technology. Therefore, we are striving to reduce the risk in line with two basic principles. First, we must exert every effort to remove the proven causative factors, one of which is the ready accessibility of large amounts of flight insurance in our airports. Second, we hope to place some controls on those causative elements which cannot be removed.

In line with this second aim, The Canadian Air Line Pilots Association offers its support to any program which will help to prevent sabotage. The development of bomb detection devices mentioned earlier remains beyond the technical capabilities of our organization. We would suggest, however, that perhaps a Canadian research organization, such as the National Research Council, could potentially make an important contribution in this area. One improvement which we would urge be acted upon immediately is that amendment to Air Regulations proposed by the Department of Transport, and discussed with industry representatives at a meeting in August 1965, to require cockpit doors to be locked during any flight. This would help to prevent a recurrence of the Gonzales case where the pilots were shot by the saboteur.

Returning to the motion under consideration, we have found that the most frequently occurring argument in support of airport vended flight insurance has been that the air traveller has a right to this protection for his dependents. It is not our aim to prevent the traveller from obtaining this coverage. However, we believe that anyone wishing to purchase this special insurance should be required to go through normal insurance screening procedures.

We have shown in this brief that due to the proven safety record of air transportation and to the fact that air carriers are liable under law in the event of an accident, that the passenger can consider himself and his estate well protected without special insurance coverage. This is, of course, borne out by the fact that few people ever buy air flight insurance.

Our aim in appearing before this Committee was to present the evidence which links airport sold flight insurance to aircraft sabotage, both historically and theoretically. We would also like to point out that these views are held by other organizations in the air transport industry. One of these, the International Federation of Air Line Pilots Associations, at their Eighteenth Conference held in Salisbury, Southern Rhodesia in 1963, unanimously adopted the resolution included as Appendix B to this brief. This international body is supported by the Pilots Associations in 48 countries.

For the reasons outlined above the Canadian Air Line Pilots Association urges the members of this Committee to support the motion under consideration. We would further recommend that the limits of this resolution be extended to achieve the complete elimination of all sales of air flight insurance in airports.

Mr. Chairman and gentlemen, that concludes the brief. I have a few supplementary remarks I would like to make very briefly.

I was interested in hearing Mr. Baldwin's statement to the effect that this insurance was provided originally by the operators. I do not doubt the truth of this, I am not questioning it at all, but when we received the invitation to attend this session I wrote to the presidents of the five air lines, whose pilots we represent in Canada, for their reaction and I advised them we were appearing and asked them if they would support us. I would like to read you the replies. I would prefer not to identify them if that is agreeable to the committee, but I would like you to read some of the replies. One president replied—

The CHAIRMAN: Do you want them identified, or are you satisfied to have Mr. Hamilton read them without identification, as he has suggested?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Without identification.

Mr. PUGH: I think he could read them without identification. If the committee, after hearing them, feels that it might be important to know who they are, they could write to the companies.

The CHAIRMAN: With that reservation, then.

Mr. HAMILTON: Thank you, Mr. Chairman.

I am opposed to the terminal insurance sales for two reasons.

These are quotes from the letters. I am not reading the complete letters.

Undoubtedly the most important is the fact that it may introduce some highly emotional person on the spur of the moment to endanger the flight and the lives on board. I must say, however, that the removal of these facilities from the terminal are not a sure cure for the present problem since a good number of the suicide bombings have involved insurance that was written especially for the flight but not at the airport, indicating long premeditation on the part of the individual involved. In any event, any discouragement of the impulsive nut at the airport is a step in the right direction.

My second reason for being opposed is that they are invariably located immediately inside the entrance door to the terminal and they unnecessarily give an immediate connotation of hazard. These types of anti-air travel devices make it more and more difficult to penetrate the mass markets.

I will identify the writer of the second letter as the president of the only company in Canada that has been afflicted with this, and they have been afflicted twice. Mr. Gilmour writes:

I have your letter of November 23rd and wish to advise that you may feel perfectly free to say that you have had indications from me that I concur in the view of your association.

The CHAIRMAN: Are you going to identify that gentlemen?

Mr. HAMILTON: That is Mr. Gilmour, the President of Canadian Pacific Airlines.

The CHAIRMAN: Thank you.

Mr. HAMILTON: A third one reads:

The concern of CALPA in expressing its opposition to the sale of flight insurance at airports is also the concern of the industry generally and has been discussed sympathetically by the directors of the Air Transport Association of Canada. Accordingly, you are at liberty to make reference to my general support of your presentation.

There are one or two other items, Mr. Chairman, and then I will be glad to answer questions.

It is our impression that the general insurance industry, as opposed to specific portion of it which deals with airport flight insurance, is opposed to this. I would like to read a brief motion from a convention of the New York State Association of Insurance Agents Incorporated. The meeting was held last year 1965.

Whereas the New York State Association of Insurance Agents Incorporated at its 1965 convention assembled takes cognizance of the fact

placed by the Air Line Pilots Association of America on the dire results which can result from the indiscriminate sale of travel accident insurance through vending machines or unknowledgeable personnel at airports and

Whereas this association commends the position of the Air Line Pilots Association of America as being in the best interest of public safety and air travel,

Now Therefore Be It Resolved that their position be supported by this association and,

Be It Further Resolved that a copy of this resolution be directed to the Air Line Pilots Association of America and the National Association of Insurance Agents Incorporated.

I would like to read a portion of a letter which was written to the president of the American Air Line Pilots Association when, at their instigation, the FAA held these hearings. The writer is the widow of the co-pilot of the Pacific Air Lines airplane that was destroyed by the action of this chap Gonzales, whose name I have quoted, when he murdered the two pilots on board, thereby causing the airplane to crash. This was written to Mr. Charles Ruby, president of the American Air Line Pilots Association:

I am very much interested in the AALPA efforts to get federal laws enacted which will prevent further tragedies of the kind that caused my husband's death on May 7, 1964. I am not thinking only of the air line pilots, but of the many thousands of passengers that need protection, too. In my own mind I am certain that my husband and father of our four small children would be alive and with us today were it not for the ease with which the lottery type insurance can be purchased at the airport terminals by mentally unstable people, who purchase large amounts of trip insurance to resolve their personal financial problems.

I strongly feel that had it not been for the ease with which one of these demented suicide-bent individuals can purchase large amounts of trip insurance, this tragedy would not have happened. I pray that Congress may see it fit to pass legislation preventing the sale of such trip insurance at airport terminals, thereby preventing such tragedies as took my husband's life.

One more observation and this, perhaps, is more in the nature of an opinion than fact. I personally fly overseas quite often as a crew member of an air line, and so do two of my confreres who are with me here today. I, with one exception, have never seen in any terminal in Europe an airport vending machine or booth for flight insurance. The one exception is London airport. I have been in most of the major terminals in Europe and while I have not been specifically looking for this, it has not come to my eye. If it is there it is hidden in a corner, or perhaps this type of insurance is sold through the air line employees. It appears to us that aircraft sabotage is a peculiarly North American phenomenon. We only know from our research of two cases of sabotage outside of North America. By North America I mean Canada, the United States and Mexico. One happened over the English channel. It was not a successful attempt. The aircraft managed to get safely back to London and no conclusions were ever published about this one. The other one happened, I believe, in South America. In any event, the motivation was not financial, it was political.

Nearly every known case of aircraft sabotage has occurred in North America, and certainly I can say it is only in North America where airport vended insurance is so readily available. Thank you, Mr. Chairman.

The CHAIRMAN: Thank you very much, Captain Hamilton.

Mr. NIELSEN: Before questioning, Mr. Chairman—

The CHAIRMAN: Just a moment, Mr. Nielsen. I was going to suggest, as Captain Hamilton read his brief in toto, that appendix A and B be included as appendices to the brief he read. Is that agreed?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: All right, Mr. Nielsen.

Mr. NIELSEN: Perhaps to start the questioning I might ask Mr. Hamilton whether he considers the fact that this readily available insurance, which is being sold in the manner in which it is, is a psychological hazard in so far as the crew members of air lines are concerned?

Mr. HAMILTON: I do not believe so. I think most of us are aware it is there but I do not think we worry about it any more than we worry about anything else that can happen to an airplane. Otherwise we probably would not be doing the job because if we were that way we would probably be psychotics and we would be unemployable in this job. I do not think so, Mr. Nielsen, no.

Mr. NIELSEN: I raise the question simply because of Mr. Wilson's statement that he never buys trip insurance and yet he never boards an aircraft without thinking there is a bomb on board. You do not feel the crew members think the same way?

Mr. HAMILTON: I do not think so. I think everyone is aware that the possibility always exists, but I do not think you could sit and think about it very much or you would not be able to do the job.

Mr. NIELSEN: There was another point raised by one of the department witnesses that in the departmental observations insurance at airports was most purchased by first trippers, people who were flying for the first time and a lot of them on charter flights. Could you tell us, in the cost of these charter flights carried out by various operators, if trip insurance is an included factor in the fare?

Mr. HAMILTON: Not to my knowledge. I am almost certain that this is not so.

Mr. NIELSEN: That is all for now, Mr. Chairman, thank you.

The CHAIRMAN: Mr. Pugh and then Mr. Aiken.

Mr. PUGH: I was hoping I would not get called so soon. However, may I start with the generality that today air line travel is becoming one of the ways of life. You only have to look at your appendix to find the passengers, kilometres, and on, and the fatality rate. In any event, we all know that today a normal is travel. This applies all over the world. I was interested in your remarks with regard to vending machines. I take it that those remarks would apply to not only vending machines but also to the booths selling insurance in the airports?

Mr. HAMILTON: This is so. Our feeling is—maybe it is just professional pride—that this is an unnecessary type of insurance. There is no more requirement for this than there is to cover any other specific risk and there is a lot

han in some. Also, to place these machines and booths in prominent places in the airport we think is a causative factor in people buying insurance. We think that a very large number of people would never even think of this except that it is right there in big bold letters.

Mr. NIELSEN: This comes under the heading of compulsive buying, does it not?

Mr. HAMILTON: In a sense, yes, I would agree with that.

Mr. NIELSEN: Now, from your brief I can take it that you feel that the compulsion would apply to those people who might be contemplating sabotage for any reason whatsoever?

Mr. HAMILTON: Yes. I think this is getting back a little bit to the brief itself. We think there are basically two types of persons who would do this. One would be a type who might do it on the spur of the moment, as it appears that this chaponzales did when he shot the two pilots. This was pretty obviously a spur of the moment decision. The removal of the availability of that insurance at the airport might have prevented that accident from happening, but there is another type which the removal of insurance from the airport will not help, and that is the cold blooded murderer who is completely capable of killing 150 people in order to get the one person he wants and who will plan it very carefully. The fact that in the majority of the cases we have quoted here airport sponsored insurance was a factor makes us feel this way. We do not pretend for a moment, and I think that is clear in the brief, that we are going to eliminate accidents or even eliminate sabotage by removing these, but if we see a loophole, no matter how small, we feel it should be plugged.

Mr. PUGH: I take it also from the remarks in the brief that—and this is getting back to the fact that it is a way of life now—the air traveller, if he wishes insurance, would be better served if he made his preparations earlier or even on an annual basis by taking out, say, a travel accident policy or insurance?

Mr. HAMILTON: Mr. Pugh, I completely agree with your interpretation. A person who wants travel insurance is far better off to buy it on an annual basis, because this type of insurance is probably the most expensive type of insurance that one can purchase.

Mr. PUGH: I appreciate your remark.

Mr. HAMILTON: It is far more expensive, and we have figures to show how much more expensive it is. For the time covered and the amount covered it is far more expensive.

Mr. PUGH: I have only one more question. It was mentioned somewhere along the line that the insurance was protection for family and dependents, and that everyone had a right to have that. I want to ask if you feel the Warsaw Convention is well known to the public?

Mr. HAMILTON: It is hard to answer that, sir, but certainly there was a lot of publicity given to the meeting from which this came. I believe it was last year in 1955 when this change was made. The limit used to be \$8,000 and this was felt to be totally unrealistic and it was lifted by these 22 countries in agreement, of which Canada was one to \$75,000.

Mr. PUGH: So that on the continental area here anyway we know that there is a minimum of \$75,000.

Mr. HAMILTON: No, sir.

Mr. PUGH: Not a minimum but a maximum of \$75,000?

Mr. HAMILTON: No, that is not correct. The Warsaw Convention only relates to travel which originates, terminates or touches down in the United States. In Canada there is no limit to the liability. If someone is killed in an aeroplane accident the estate may sue the air line for every cent they think they can get out of them.

Mr. PUGH: You said, though, that Canada subscribed to it.

Mr. HAMILTON: This is for our Canadian flights which go into the United States or in transit in the United States as well. If they stop and then go somewhere else.

Mr. PUGH: Now, just to clear the picture a little bit more. You say there is unlimited liability in Canada and to me the word "liability" means that there has been something which can relate to say, the individual air line, that they have been derelict in their duty, or something like that, and that there is a liability in law. Have there been payments paid out, for instance, on this DC-6B C.P.A. air accident under the heading of liability?

Mr. HAMILTON: I really cannot say. We do not know the answer to this question. It usually takes some time for this type of thing to be settled.

Mr. ROGERS: Perhaps I could indicate that in the case of the Air Canada Therese accident in 1963 it was thoroughly investigated by the Department of Transport and subsequently a public enquiry was held and no blame was ever assessed either to an individual or the air line. The figures appearing in our brief amount to payments of over \$100,000 in some cases with no fault.

Mr. PUGH: There was no question of sabotage there, though?

Mr. HAMILTON: No. What I am saying, sir, is that these are not insurance payouts we are talking about. Our point here was that the evidence indicated that a passenger who is killed on an air line in Canada, his estate is pretty well looked after through the law-suits which take place as a result of these accidents.

Mr. PUGH: Yes, but you must have a liability to start with somewhere along the line.

Mr. HAMILTON: There is no limit on it and, as Captain Rogers said, sir, it was pointed out that there was no liability placed on the carrier from the Therese accident, and yet there were 110 claims filed and most of them have been settled by now. Some of them were as high as \$110,000. The president of the air line could probably tell you why they do this. I suspect it is something to do with publicity.

Mr. PUGH: The idea behind the brief is that insurance readily available, in your opinion, is causative; there is a possibility and, therefore, it should be eliminated. I was thinking along the line of the family, the dependents and straight insurance. For instance, even under the Warsaw Convention there is a guarantee that dependents are going to receive one cent.

Mr. HAMILTON: No. I hope I have not confused anyone by perhaps not speaking clearly enough. The liability under the convention that we are talking about has nothing to do with insurance. This is a liability of the carrier toward anyone who is killed on one of his vehicles. The limit we are talking about is the limit that has been agreed to by all these companies. It has nothing to do with insurance.

Mr. PUGH: I have one more point and it has to do with the Department of Transport accident reports, et cetera, and on reading them over I find that there are no remarks on the investigation and findings or conclusions with regard to insurance sold. Do you not think that that is something that should be included in the whole report which is prepared by the government and filed?

Mr. HAMILTON: I would say, sir, that this would depend very largely on the type of accident, if it is known, but I would think that there is not the slightest bit of doubt that this would be done, and I am sure that it is, even though it may be done by the police rather than by the Department of Transport.

Mr. PUGH: I notice, though, in your brief in regard to the DC-6B that you quite heavily make mention of insurance, whereas in the actual accident report, if you read it right through—it deals with human factors and all the rest—you do not find anything in that report on regard to a search and a report on actual insurance sold.

Mr. HAMILTON: I would suspect, sir, that this is done, but it is kept on a confidential basis so as to not hinder any possible investigation which may be made by the police. If they had to publish—

Mr. PUGH: To get back to my question, do you think it would be a good thing to have it included in the actual report which is filed by the Department of Transport.

Mr. HAMILTON: I have no strong opinion on that particular point.

Mr. PUGH: Has it been discussed, for instance, by your association?

Mr. HAMILTON: No, but I would certainly say, as they have a manual of investigation procedures, that this should be included, and I suspect that it is. But insofar as publishing this goes, I do not see that it would serve any useful purpose and it could hamper an investigation.

Mr. PUGH: I had better pass for the moment, Mr. Chairman.

Mr. ROGERS: I just have an additional comment. This is a standard procedure in accident investigation in the United States. Apparently they initially examine the record for insurance sales. The difference in Canada might well be that the Department of Transport conducts a technical investigation into the accident and do not investigate the accident from a criminal aspect. The C.P.A. DC 6B accident, apparently at the time it was established this was caused by a bomb the technical examination of the D.O.T. was regarded as being complete. However, the criminal investigation was then, and probably still is, an open case with the R.C.M.P. Possibly that might answer the member's problem.

Mr. RYAN: Can I ask a supplementary question, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. RYAN: Is there not a public inquest held after every crash of this kind?

Mr. HAMILTON: Yes.

Mr. RYAN: Would there not be a report there if it was a certainty that there had been sabotage and insurance involved?

Mr. HAMILTON: Not necessarily. As I said, I would think that if there was a question of sabotage that the investigating people, mainly the police, would like to keep this particular aspect as quiet as they could for as long as they could while they ran down their various suspects.

Mr. RYAN: Could they simply not hold off the inquest until they were certain? What is the practice? Could you give it to us?

Mr. HAMILTON: Of the inquest?

Mr. RYAN: Yes.

Mr. HAMILTON: I think Captain Rogers could answer that question.

Mr. ROGERS: It is a pretty variable practice. As you know, the coroners come under a completely different jurisdiction than the R.C.M.P. or the D.O.T. and for that matter, you get great discrepancies in the conduct of these coroners inquiries. The same is true in the United States. This depends on the province or the state. I know the coroner's inquiry into the Air Canada Ste. Therese accident occurred, I believe, after the D.O.T. investigation had been completed and after the public enquiry had been completed.

Mr. RYAN: I suppose in Europe there is even less likelihood of getting a good solid report out of an air crash in which sabotage is suspected.

Mr. ROGERS: In Europe many of the states involved are members of the International Civil Aviation Organization, and there is a uniform system of accident investigation which is supposed to be conducted. That is the standard under which Canada would conduct an accident investigation. However, here again other forms of jurisdiction take over. In Italy, for instance, any time you kill somebody it requires a police investigation, so you get a technical investigation being conducted by the aviation section of the government and you get criminal investigation occurring simultaneously, perhaps, with the pilots, if they have survived, in jail while the police sort it all out. There is no uniformity.

The CHAIRMAN: That is, I guess, the end of your supplementary. We have Mr. Aiken, who I have no doubt is going to bring in the doctrine of *res ipsa loquitur*, or something of that kind, and then Mr. Mather.

Mr. AIKEN: Thank you, Mr. Chairman. No. I may come to the question of absolute liability in a moment because I think that should be clarified.

Mr. Chairman, firstly I would like to say that I was very impressed with the presentation and, as I indicated in questions to the Department of Transport officials, if any suggestion whatever is raised that there is a connection between air safety, sabotage and the sale of air insurance at the airport I would have no hesitation in thinking that we should discontinue it.

During the reading of the brief I noticed on page 4, where the cases of sabotage are listed, that none of these cases seem to indicate a sale of air trip insurance tickets from a vending machine. Can anyone enlighten me on that particular matter?

Mr. HAMILTON: I do not know whether our information is detailed to that extent. I think wherever we talk about air trip insurance in the brief we mean

air trip insurance that was bought at the airport as opposed to air trip insurance which may be bought through an agent.

Mr. AIKEN: This would be either at a counter or through a vending machine?

Mr. HAMILTON: Yes, I think that is right.

Mr. AIKEN: So that there is no distinction as far as you know between the two?

Mr. HAMILTON: No, as far as we are concerned we would like to see them both done away with.

Mr. AIKEN: I rather gathered the impression that the number one culprit was the vending machine in that, for the reasons that were mentioned, it appears first at the doorway to people who enter and it seemed to create some hazard. Secondly, it provides anonymity with which people can purchase, and so on. I rather gathered that this was the first culprit and the second one was counter sales. Am I right in that conclusion?

Mr. HAMILTON: Yes, sir. We do not feel that there is much less anonymity at the counter than there is at the machine because the girl is probably handling dozens of people in a normal shift—it is hard to say how many, but several people in a normal shift—and she is only a clerk, she is not there to make inquiries. She is not an insurance agent in the strictest sense of the word.

An hon. MEMBER: Meaning what?

Mr. AIKEN: Well, this is what I was going to follow up. Is there any difference between the sales at the two places, that is, the vending machine or at the counter?

Mr. HAMILTON: The only difference is that sometimes you put your quarter and there is nothing in the machine and you lose your quarter! As far as I know there is no difference, no.

Mr. AIKEN: Would it improve the situation if there were more detailed information required at a counter?

Mr. HAMILTON: This is a difficult question to answer, but I do not think it could really change our opinion. An insurance agent is a specialized person, the same as I am the same as you are, I presume, and so on, and he deals with people. If somebody comes along and says, "I want \$100,000 worth of insurance for 24 hours", he will say, "Why?" unless he knows the person. This is what we are really getting at when you get through all the words. We do not like the opportunity that is there for someone to go in and if he has got enough quarters he can buy \$300,000 worth of insurance for one trip. It will cost him quite a bit of money but he can do it, and he cannot do that anywhere else. There is no place where you can go and buy that much insurance without somebody taking a good close look at you and at your affairs. It is the \$50,000 policy which would be harder to police because in this day and age \$50,000 is not really an awful lot of money, but \$300,000 still is.

Mr. AIKEN: Well, I will conclude with one more question. We, like yourselves, are aware that improvements are made by degrees. I was merely explor-

ing the possibility of removal of the vending machines as a preliminary step in any case, because I rather agree with that proposal.

I would now like to come back to the question of liability that we started on. The air lines have, as I understand it, an absolute liability to their passengers for which they make settlement of some kind after an accident regardless of the cause of the accident, is this your understanding?

Mr. HAMILTON: It is my understanding but I would not like to be quoted because I am not that familiar with it, but I believe that there must be some arrangement—

Mr. AIKEN: Perhaps Captain Rogers could answer that and at the same time tell us if he knows of any case where an air line has said, "This was not our fault so we will not settle".

Mr. ROGERS: The \$75,000 limitation of liability which Captain Hamilton refers to actually is an agreement among a number of air lines outside the Warsaw Convention or The Hague protocol. Let me read to you what Mr. Lee Crindler, who is the chairman of the American Trial Lawyers Association, Aviation Law Section, had to say about this:

I would like to say a few words about the new rule that exists in international aviation. On Friday all of the major air lines filed tariffs, and their countries filed supporting agreements, to waive the limits of liability to \$75,000 and to waive the opportunity that they had under the Warsaw Convention, Article 20, para. 1, which provided that the carrier could exculpate itself by showing it took all possible measures to avoid the damage. This means that we have a system of absolute liability with a limitation of \$75,000.

I think that might answer your first question. Your second question I cannot answer. We assume that Air Canada is not being blamed for the Ste. Therese accident in any way, shape or form, but it still paid \$198,000, I think, to one widow with four children.

Mr. PUGH: Could we deal with absolute liability a bit more?

Mr. AIKEN: Yes. I presume on the Ste. Therese case the air line could not disprove liability, and the chairman was calling attention to the legal maxim *res ipsa loquitur*, which says that the air line has the responsibility unless it can disprove it, and I wonder if there are any cases where absolute sabotage was proven and the air line said, "No, we will not pay it because we took all the necessary care"? You should not have suggested that legal maxim to me, Mr. Chairman!

Mr. ROGERS: The answer again is that I do not know. I should attempt to explain that we tried to get details of settlements which Canadian operators have paid out in cases of accidents of all descriptions, and found out that in the preparatory work to the Warsaw Convention meetings—the amendment to Warsaw which I.C.A.O. conducted last year—the Air Transport Board did a thorough study and after four months came up with a very limited amount of information. This information was not available to people in that position of responsibility and therefore we are not able to state anything further.

Mr. AIKEN: Thank you. I will conclude by saying that for all practical purposes, then, we can assume that if a person loses his life in an air line accident that the carrier will bear the first responsibility to his estate, and that anything additional is purely for the loss of life of that person and has nothing to do with the reason for the loss of his life. Would that be correct? That is, the air terminal sales of insurance are merely for loss of life; it has nothing to do with liability?

Mr. ROGERS: No.

Mr. RYAN: Mr. Chairman, I would like to know if the Guay case in Quebec was not a clear case of sabotage? In fact, the man was hanged for it, was he not?

The CHAIRMAN: Two people were hanged for it, I believe.

Mr. RYAN: I wonder what the air line did with respect to the beneficiaries in that case?

The CHAIRMAN: Is the witness in a position to answer that?

Mr. HAMILTON: We do not have this information. The question is whether, in the case of sabotage, this absolute liability is still applied. This is the question and I do not think we have this answer. Do we know whether anyone filed a suit and was paid after the DC-3 accident? I am sorry, but we do not have this information.

Mr. PUGH: I handled one of the estates and as far as I know there never has been even since that time.

The CHAIRMAN: Mr. Watson thought in Windsor they could get a legal opinion from the Department of Transport.

Mr. NIELSEN: We are getting into an area here which is a matter of some depth—

The CHAIRMAN: There is no question about that.

Mr. NIELSEN: —and I do not want to stop, but I could simply say this to clear up some misapprehensions. As I understand it—of course, my version could be just as wrong as others—the Warsaw Convention covers a person up to \$75,000 on an absolute liability basis. The estate may have \$50,000 or \$100,000 bought from a vending machine, which the insurance company would be liable to pay. This still does not limit the carrier's liability because, on proof of negligence, if the claimant's estate has damages assessed, because of the loss of a great doctor or someone else who is earning \$100,000 or \$200,000 a year on a life expectancy of \$30,000, there would be several of hundreds of thousands of dollars which the carrier would be liable to pay.

The CHAIRMAN: We are bringing in some very interesting rules.

Mr. PUGH: Mr. Chairman, in the case of proven sabotage have liability payments been made to passengers?

Mr. NIELSEN: By whom?

Mr. PUGH: By the air lines. Who else could it be?

Mr. NIELSEN: Well, insurance companies.

Mr. RYAN: There would be no question of the insurance company paying, they would have to pay. The question is does the air line pay?

Mr. NIELSEN: Are there any known cases decided by the courts where recovery has been made against air lines?

Mr. PUGH: Where known sabotage has been the cause of the crash?

Mr. HAMILTON: I suggest, Mr. Chairman, at this stage there is probably only one accident of this type which might reveal this information because I doubt if the other one is settled yet. With respect to the one in 1949, it should be possible to dig out the information as to whether or not this liability holds in the case of an airliner that has been sabotaged.

Mr. NIELSEN: There have been actions commenced in the C.P.A. accident, I know that.

Mr. AIKEN: Mr. Chairman, the objective of my questions was merely to see whether, if the sale of trip insurance at airports was withdrawn, people would be uninsured or unprotected in flight, and then the public interest might be a matter of consideration. I assume we will have to take this up with the insurance people if they come.

Mr. HAMILTON: Mr. Chairman, I would like to point out that the withdrawal of this type of machine and this type of counter from an airport does not preclude a person from buying insurance. Everyone buys insurance and therefore everyone must know an insurance agent, and if they wish they can do it by picking up a phone, I should think. It is still going to be available; it is not going to be taken away from them. We are not against insurance, I have lots of insurance.

Mr. MATHER: Mr. Chairman, I would like to ask a couple of questions. We have heard from the Department of Transport people that only about 8 or 10 per cent of passengers actually buy air flight insurance and I think it is your contention that what with the Warsaw agreement and the air line liability, the ability of passengers to buy insurance from the air lines and the usual legal lawsuit provisions, that the average air passenger's estate is pretty well protected without having the on-the-spot machines or booths from which he can buy insurance at the airport. And I right in presuming about you believe that the presence of the booths and machines, even to a small degree, acts as an inducement to a dangerous situation in regard to sabotage on the plane?

Mr. HAMILTON: To answer that question, I am quite convinced the fact that it can be bought completely anonymously is a factor in some cases of people who intend to take this horrible method of doing away with someone or doing away with themselves. I think the fact that I can get it there through a machine is a very impersonally from a pretty little girl at a counter is a factor in their plan.

Mr. MATHER: Would you say that the presence of the machines in the booths and the ability to buy insurance on the spot, as we have heard, is a big factor—I am doubtful how to put this—what I am getting at is that it is a detrimental factor of larger degree than any possible benefit to the public through the presence of those machines?

Mr. HAMILTON: I do, sir.

Mr. MATHER: In the event that a change was made and the machines and the booths were taken out of the airports to meet the arguments of those who maintain that this might take away from the travelling public its right to buy

insurance under certain conditions, would you think that consideration might be given to having a new system of airport insurance vending, perhaps through screening by the D.O.T., or some agency of the D.O.T. or insurance might be bought directly from the airlines themselves. What I am thinking there is that the airlines would have an economic interest in protecting their own interest, thereby be more stringent in screening.

Mr. HAMILTON: I do not think I can agree with this. I think that you cannot go to a fire hall and buy fire insurance on your house. Why should you be able to buy air trip insurance at an airport? As a professional pilot I am insulted that such insurance is available; but I do not see why we should pander—I should not say pander, that is the wrong word—but why should we coddle people for this type of thing when we do not do it for others. It is just not dangerous to fly.

Mr. NIELSEN: In other words, we do not have insurance vending machines every 200 miles along our highways?

Mr. HAMILTON: Or at every gas station.

Mr. NIELSEN: Or at every gas station.

Mr. HAMILTON: You cannot drive into a gas station and say, "I am going to drive to Toronto and I want an insurance policy to cover myself". It is a completely unnatural thing, as far as we are concerned. This is one of our objections to it.

Mr. MATHER: Your position, then, in back and white, is (1) you want the machines and the booths removed from the airports. You do not see any grounds for a new set-up or compromise on that?

Mr. HAMILTON: No, sir. As I said before we are not against insurance of any kind. I should not say that. We are against this particular type of insurance. We are not anti-insurance but we feel that people who want insurance for travelling can get it, and if they use their brains they can get it a lot cheaper by buying it on an annual basis, if they do enough flying or travelling, of course. Even for the one trip they can still get it through a general agent.

Mr. MATHER: Thank you. That concludes my questions.

Mr. ROGERS: Just as a supplemental answer to that, I was intrigued by the information provided by the representatives from the Department of Transport which indicated that a great percentage of the people who buy it are first timers. I submit that when you do something for the first time you look around and try to see what other people do who fly all the time, and you see insurance counters there. You have never been in a terminal before, and you are taking a tip and you might think it is the thing to do. Yet, the representative from the D.O.T., an experienced traveller, did indicate that as an experienced traveller he never buys it. I think people are misled to this extent. Thank you, sir.

The CHAIRMAN: Are there any other questions? I wonder if Captain Rogers, or some one of the witnesses or someone from the Department of Transport, could tell me whether the air line companies carry insurance against the risk that they are involved in?

Mr. HAMILTON: I think that some of them do it one way and some do it another. Some buy commercial policies and some insure themselves through

their own funding, but we do know that in the Air Canada accident at Ste. Thérèse the company carried a \$5½ million coverage, a policy to cover themselves from lawsuits which might result from an accident.

The CHAIRMAN: Are there no more questions? Yes, Mr. Whelan. I had an idea you would be in. I was wondering why you were not.

Mr. WHELAN: I am a bit late because I had to go and protect the primary producers of agricultural products at the Consumer Credit Committee. Then I had another meeting with tobacco growers, and I just came down here now. I have nearly forgotten my question.

In *Maclean's* magazine there is an article on this problem of these machines in the airports. In that article it is estimated that D.O.T. was negligent in the amount of money that we got for these machines, comparing it to the amount of money they recouped for these same machines, using the airport or terminal facilities there. Is there any authenticity to this?

Mr. HAMILTON: I do not know but I can perhaps use the occasion of your question to bring up a point that I forgot about. Some member of the Committee asked a D.O.T. man whether any other country had done anything about doing away with, or taking any steps to limit the liability and so on. The answer was no. Actually, this is one exception. The only large commercial airports in the United States which are controlled by the federal government are the two in Washington, the Dulles international and the Washington national. In both these, there is a limit on the amount of insurance you can buy. I do not happen to have the figure with me of what that limit is but there is a limit. These are the only two airports that the federal government in the United States has jurisdiction over.

Mr. NIELSEN: All other airports are municipally operated, are they not?

Mr. PUGH: That arises as the result of federal regulation or—

Mr. HAMILTON: Yes.

Mr. PUGH: If it is a federal regulation, why would it not apply airport-wise all over the United States?

Mr. NIELSEN: Airports are not under federal control in the United States.

Mr. WOOLLIAMS: The big one in Detroit, the Metropolitan Airport is owned by the Wayne County Road Commission.

Mr. HAMILTON: We have two airports in Canada that are not controlled by the federal government, too. One is in Saint John, New Brunswick and the other is, I think, in Calgary or Vancouver.

Mr. WINSOR: The one in Calgary is the main route.

Mr. HAMILTON: I beg your pardon.

Mr. WINSOR: Two on the main routes.

Mr. HAMILTON: Yes, that is what I meant.

Mr. WINSOR: Saint John and Calgary, both of these will be turned over to departmental jurisdiction in the near future. There are quite a number, Mr. Chairman—

The CHAIRMAN: Would you please speak closer to the microphone. Could you move up to the table. Perhaps you had better start from the beginning so that it will be on the tape.

Mr. WINSOR: Mr. Chairman, I was saying there are two airports on the main line route across Canada that are not owned by the Department of Transport at the present time. These are at Saint John, New Brunswick and Calgary. Both of them we expect will be coming over under our jurisdiction in the immediate future; certainly next year, that is, 1967.

There are several other airports in Canada operated under the jurisdiction of the various municipalities, possibly a greater number than Transport are operating themselves. Does that answer your question?

The CHAIRMAN: Thank you very much, Mr. Winsor. Yes, Mr. Pugh.

Mr. PUGH: One more thing; does your organization or association know why there is a limitation on the two federal airports in the United States?

Mr. HAMILTON: I am afraid we do not know. I just brought it out as an interesting thing, because while the answer was substantially correct, that the Department of Transport man did give, there is this one exception. I do not know why it is unless it is something along the lines we are talking about, to prevent this very large purchase through the machine.

Mr. PUGH: It could not be a federal law because it would be—

Mr. HAMILTON: It is a law governing federal airports, I would presume.

Mr. PUGH: Yes. There would be no reason at all why a man could not buy the limit in the federal airports, these two that you cite, and be covered elsewhere on the same trip.

Mr. HAMILTON: No.

Mr. PUGH: This is just in the actual sale, a man can only take so much at a time.

Mr. MATHER: Mr. Chairman, would not the significant point here be that in the two areas where the Americans have the right to do what we have pretty well across the country, they have done it? They have regulated their insurance sales.

Mr. HAMILTON: To a minor degree, yes.

Mr. MATHER: They have made a start, anyway.

Mr. HAMILTON: Yes.

Mr. WOOLLIAMS: To your knowledge none of the other airports that is not under federal control does not try and control the amount of insurance that is sold in the terminals?

Mr. HAMILTON: Not to my knowledge.

The CHAIRMAN: The Canadian air line pilots have placed before you two reports from the Department of Transport, one being the report on the accident involving the Douglas DC-3 aircraft in the province of Quebec on September 9, 1949, and another one with respect to an accident which occurred at 100 Mile house on the date I take it of July 8, 1965, whatever may be the correctness of

the date and place of the accident, least they are before you. I was wondering if it is agreed that they be exhibits to today's proceedings?

Agreed.

Mr. NIELSEN: They are filed with the Committee?

The CHAIRMAN: They are filed with the Committee, yes.

Agreed.

The CHAIRMAN: If there is no further business, then, or no further questions—

Mr. NIELSEN: Before Mr. Winsor gets away perhaps we could ask him to provide the Committee with the relative amounts of revenue that D.O.T obtains from insurance sold at booths, as opposed to that which is sold by machines, and the separation of the rental in each case from the concession fees earned in each case for the years that are shown in his tables.

The CHAIRMAN: Mr. Winsor, would you come up and take your place at the table and answer these questions if you have the information available?

Mr. WINSOR: Mr. Chairman, we will undertake to do that.

The CHAIRMAN: Is that satisfactory to you, Mr. Nielsen?

Mr. NIELSEN: Thank you, Mr. Chairman.

Mr. WHELAN: Could I ask you one question, Mr. Chairman. Have you had the insurance companies that operate these machines before the Committee or do you intend to have them before the Committee?

The CHAIRMAN: We expect to have them before us on Thursday at 9:30. Thank you very much, gentlemen. Thank you Captain Hamilton.

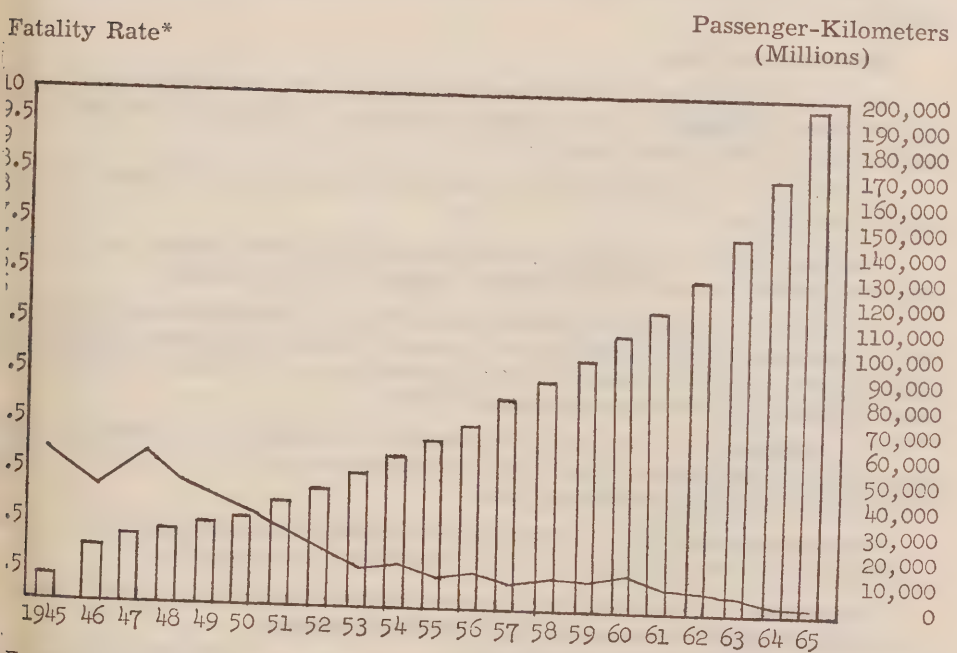
The meeting is adjourned.

APPENDIX 15

APPENDIX A TO C.A.L.P. BRIEF:

PASSENGER FATALITY RATE COMPARED WITH GROWTH
IN TRAFFIC 1945-1965

(scheduled Services, International and Domestic)



Fatality rate equals the number of passengers killed per 100 million passenger-kilometres flown.

(Source: Paper presented by A. M. Lester of ICAO at the joint Aviation Safety Meeting of the American Institute of Aeronautics and Astronautics, the Cornell Guggenheim Aviation Safety Center, and the Canadian Aeronautics and Space Institute; Toronto; October 31—November 1, 1966)

APPENDIX 16

APPENDIX B to C.A.L.P. Brief:

Resolution adopted at the Eighteenth Conference of the International Federation of Air Lines Pilots Associations, Salisbury, Southern Rhodesia, March 1963.

Item B 8 DETECTION OF DESTRUCTIVE OBJECTS ON BOARD AIRCRAFT

BE IT RESOLVED THAT:

(1) IFALPA Member Associations should give every encouragement to research into procedures to detect and, if possible, to prevent the placing of destructive objects on board aircraft.

(2) WHEREAS there have been numerous aircraft accidents caused by in-flight sabotage; and

WHEREAS present technology can provide no dependable means for detection of nefarious devices carried in passenger luggage or hand baggage;

THEREFORE, BE IT RESOLVED THAT IFALPA Member Associations strongly urge for a provision in "the Conditions of Carriage", in the appropriate regulations, which would permit the examination of the contents of all passenger luggage or hand baggage transported on passenger aircraft.

(3) WHEREAS the relationship between the availability of passenger flight insurance at air terminals and acts of sabotage involving aircraft has been clearly and repeatedly established; and

WHEREAS present airport insurance sales practices are fundamentally incompatible with the proven safety record of modern air transportation;

THEREFORE, BE IT RESOLVED THAT IFALPA Member Associations oppose the sale of passenger flight insurance on any airport property.

Proposer: Captain Lasserra (France)

Seconder: Captain A.D. Mills (Canada)

Carried unanimously

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

Copies and complete sets are available to the public by subscription to the Queen's Printer. Cost varies according to Committees.

Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 24

THURSDAY, DECEMBER 15, 1966

Respecting the subject-matter of
Private Member's Notice of Motion No. 1387

WITNESSES:

From Mercury Travlsurance Agencies Ltd.: Mr. Maurice Arless, Vice-President and General Manager; and Mr. Gordon Blair, legal counsel.
From Mutual of Omaha Insurance Company Ltd.: Mr. James Barrett, Executive Vice-President; and Mr. Eugene R. Brady, President of Tele-Trip Inc.; Mr. H. L. Rogers, Regional Manager of Tele-Trip Inc.; and Mr. George Finlayson, legal counsel.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, December 15, 1966.

(28)

The Standing Committee on Justice and Legal Affairs met this day at 11.10 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Forest, Guay, McQuaid, Pugh, Ryan, Tolmie, Wahn, Whelan—(12).

In attendance: From *Mercury Travlsurance Agencies Ltd.*: Mr. Maurice Arless, Vice-President and General Manager, and Mr. Gordon Blair, legal counsel.

From *Mutual of Omaha Insurance Company Ltd.*: Mr. James Barrett, Executive Vice-President; and Mr. Eugene R. Brady, President of *Tele-Trip Inc.*; Mr. H. L. Rogers, Regional Manager of *Tele-Trip Inc.*; and Mr. George Finlayson, legal counsel.

The Chairman introduced Messrs. Arless and Barrett who in turn introduced the various officials from their respective companies.

Messrs. Arless and Barrett then made statements covering their respective briefs re Mr. Basford's Notice of Motion Number 2, following which they were questioned by the Committee.

On motion of Mr. Forest, seconded by Mr. Aiken,

Resolved,—That the submission of *Mercury International Travlsurance Agencies Limited* be appended to today's proceedings. (*See Appendix 17*)

On motion of Mr. Wahn, seconded by Mr. Pugh,

Resolved,—That the submission of *Mutual of Omaha Insurance Company Ltd.* and *Tele-Trip Company Inc.* be appended to today's proceedings. (*See Appendix 18*)

During the questioning, Mr. Barrett agreed to provide the Committee with certain material pertaining to number of claims paid out, financial statements, and sales figures.

Agreed,—That *Mutual of Omaha* specimen policies pertaining to trip insurance be made an exhibit. (*See Exhibit 25*)

The Chairman referred to correspondence from Mr. Roy S. Grant, in which he expresses his views regarding air trip insurance.

Agreed,—That the following: letter from Mr. Grant to the Minister of Justice dated October 7, 1966; letter to Mr. Grant from the Director, Airports

and Field Operations, Department of Transport, dated October 31, 1966; letter from the Department of Justice to Mr. Grant dated October 13, 1966; letter from Mr. Grant to the Department of Justice dated December 5, 1966; letter from the Department of Justice to Mr. Timothy Ray, Clerk of the Committee, dated December 12, 1966; be made an exhibit. (See *Exhibit 26*)

The Chairman thanked the witnesses for their informative briefs and answers to the questions of the Committee.

At 1.10 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, December 15, 1966.

The CHAIRMAN: Gentlemen, we have a quorum. I would like to introduce our witnesses. The first witness is Mr. Maurice Arless, Vice-President and General Manager of Mercury International Travlsurance Agencies Limited. The next witness is Mr. James Barrett, Executive Vice-President of the Mutual of Omaha Insurance Company. They are accompanied by their distinguished counsel, Mr. G. D. Finlayson and other members of the various organizations. Probably you might introduce the others, Mr. Arless, as I did not get their names. Of course everyone knows Mr. Blair. Mr. Finlayson, would you stand up. Would you introduce the others, Mr. Arless?

Mr. M. ARLESS (*Vice-President and General Manager, Mercury International Travlsurance Agencies Limited*): Mr. Eugene Brady, President of Tele-Trip; Mr. Irv Lemon, Vice-President of Tele-Trip; Mr. Herb Rogers who is the Canadian Manager for Tele-Trip and Mr. Allen Parslow of Mr. Blair's office.

The CHAIRMAN: Thank you very much, Mr. Arless. Mr. Arless and Mr. Barrett have suggested that because there is a great deal of similarity in their briefs that they each make their presentation, before any questions are put. Then, questions may be directed to either one of them.

Mr. Arless, will you begin your presentation.

Mr. ARLESS: Thank you Mr. Chairman. I would like to suggest, in the interest of time, that I not read my brief but just summarize it, if that is acceptable to the members.

The CHAIRMAN: That will be all right. It will be printed as an appendix to the proceedings.

Mr. ARLESS: Thank you. First of all, gentlemen, we welcome this opportunity to appear here today to present our views on a subject of importance that is before this Committee. By way of introduction, my company operates not as underwriters but as an operating agency at Ottawa, Dorval and Halifax airports and through machine locations at 34 Canadian airports. At various times, we have operated other concessions at major airports in Canada.

The insurance industry has reflected on a continuing basis its concern over aviation accidents and it must be admitted that it certainly has a real interest in their prevention. We support continually any measures that will help deter accidents generally. We feel that the measure before you today must allow for the continuing interest of the public as a whole and must not subject the public to unnecessary inconvenience or loss. We feel that the measure must demonstrate that it will, in fact, accomplish the stated purpose of preventing aircraft accidents.

It is our opinion that this proposal will not meet either of the two basic conditions that we have just stated. We feel that this resolution is not in the public interest.

It is our opinion that relatively few people are sophisticated enough to acquire the permanent insurance portfolio that insurance people generally feel they must have and the readily available service that we provide at airports answers their needs. This insurance which, incidentally, is not solicited at airports, has been demonstrated to be desirable and it has also been demonstrated by the public that they feel they need it. It is estimated that somewhere between 20 to 25 per cent of the travelling public avail themselves of the convenience of this kind of service. Now it might appear that there is some divergence of opinion on this, but you all very well know that if you are ticketed you are counted as an emplaned passenger every time a piece of that ticket is lifted from you. There is no accurate way of measuring this, but it is our estimation that between 20 to 25 per cent of the public travelling avail themselves of this service.

We also would like to point out that the travelling public by its very nature is unable to be organized and have itself heard at these proceedings. But the public has demonstrated its support of the service and we feel that the interest of this travelling public should not be overlooked. We know that beneficiaries of innocent victims of crashes have appreciated the peace of mind this insurance has afforded and we also know that the protection has done much to mitigate the consequences of these disasters. We feel it would be a serious step to limit the opportunity of air line passengers to this insurance.

We also feel that it is necessary to avoid discrimination. It is our opinion that travellers who originate from intermediate or smaller-sized airports have every right to expect the same type of coverage which is offered in machines at larger airports. We are very pleased and happy that people from Whitehorse to Summerside can avail themselves of this insurance. Using Department of Transport figures, it is estimated that over a ten year period one person in five secures the protection he needs from machines.

We do not feel that the prohibition of the sale of insurance through vending machines at airports will contribute to the reduction of air accidents, and we support the Department of Transport's view that there are no grounds at all for suggesting any relationship between sabotage and life insurance. We cite at length the findings of various investigating committees whose judgments have been that there is no grounds for suggesting a relationship between sabotage and flight insurance. It is our opinion, and it appears to have been brought out in previous testimony, that sabotage by planning also implies deliberation and seems unlikely that any dastardly scheme would depend on the last minute purchase of flight insurance at an airport.

We would like to point out once more the much discussed Guay case where it has been established and proven that John Albert Guay had long planned to murder his wife and that flight insurance purchased at the airport was not even remotely connected with his act of his motive.

We respectfully submit that from the experience of the industry as a whole it has found that the insurance which is made available to the public is beneficial to the public, and the participation by the public seems to indicate that the

continue to want its service. Studies have concluded that the availability of trip insurance at airports has provided no motivation or reason for sabotage. We feel that the public at large would be penalized by its removal, without providing any demonstratable compensating benefits in the control or prevention of sabotage.

Thank you, gentlemen, for your time.

The CHAIRMAN: Thank you very much, Mr. Arless. So that the brief of the Mercury International Travlsurance Agencies Limited will be available to the Committee, could I have a motion that the brief be printed as an appendix to today's proceedings?

Mr. FOREST: I so move.

Mr. AIKEN: I second the motion.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Barrett, will you now proceed.

Mr. James E. BARRETT (*Executive Vice-President of the Mutual of Omaha Insurance Company*): Thank you, Mr. Chairman. My name is James E. Barrett. I am Executive Vice-President of the Mutual of Omaha Insurance Company which operates through its subsidiary, Tele-Trip Company, air insurance facilities throughout the world and in many of the major installations here in Canada.

We have submitted for the record, Mr. Chairman, a formal detailed statement and with your approval I would like to refer to one or two highlights in the dissertation, much of which reaffirms the statements made by Mr. Arless this morning.

I would like to call your attention, sir, to the detailed analysis of the so-called air sabotages in the 33 year history of the air line industry on the North American continent and to suggest to you, sir, that a careful review of that will show that flight insurance, whether vended through a machine or through a counter service, had little or no connection with these heinous crimes. I would then like to call to your attention, sir, that we join with the pilots and all others who are interested in flight safety—indeed, sir, we are most interested not only as corporate executives but also as users of the air lines—in the hope that every flight that takes off makes a safe landing because we, too, fly about as much as the average air line captain. But if we are going to come to grips seriously with the matter of sabotage of aircrafts, it is really beyond our reach as individuals or as a combination of any individuals, to legislate against the motives that would appeal to a demented mind that would commit one of these crimes.

It is, on the other hand, within our prerogatives indeed difficult at this time to control the means by which one of these airplanes could be destroyed by anyone regardless of his motive, whether it be the age-old love triangle, greed or money, business failures or the many other reasons that seem to crop up when one of these crimes are committed. It has always amazed us that in this modern, great, complex society in which we live and the many precautions we take in respect of individual citizens health, safety and welfare, we have yet to come to grips with the control, acquisition and disposition of the one weapon that most of these saboteurs use to destroy an airplane, namely explosives and that is commonly referred to as dynamite.

We suggest that rather than drive ourselves toward a piece of legislation that would attempt to control a man's motives, we try to remove from him the means by which he destroys the airplane. So we suggest, sir, that we direct our attention in a constructive way toward the restriction of the acquisition and control of explosive materials as a first step in helping to deter these crimes.

We suggest, further, that already existing legislation, both here in Canada and the United States, be studied to see if it can be more strictly enforced and in that way we could possibly deter a saboteur. It is currently against the law in both of our great countries to carry sidearms on an airplane and I do not believe that we have been very successful in enforcing that statute.

As legislators, Mr. Chairman, and as citizens, indeed, there should be complete unanimity and agreement that the penalty for such a crime or the attempt to commit such a crime should be the greatest penalty that each of our countries would allow to be inflicted on a criminal. Further, there should be given wide publicity to the fact that such a crime or the attempt to commit such a crime would be punished accordingly, so that anyone who is in the frame of mind to destroy an airplane would know well in advance what the possible ramifications of his acts might be.

Also, we should all encourage in our own individual capacities research by both government and private agencies to develop means by which we can determine whether explosive devices have been put on a plane. Ten years ago this was considered quite impossible and improbable. Today, sir, I am happy to tell you that much progress has been made in the near development of devices which when placed on a plane will allow the crew to ascertain that explosive material was present. We should encourage that type of research in every way we can.

I think research and development in plane construction has to be encouraged by all of us. Is it possible, for instance, to construct a baggage compartment on an airplane so that if an explosion took place either deliberately or I suggest, sir, accidentally, that compartment itself would be the local point of an explosion and the explosive damage could be contained just in that area. There has been a lot of research done in this and, of course, it brings up immediate economic problems affecting the payload of the aircraft, but we should consult and further develop research in this area to make the plane itself as safe as we can.

In conclusion, I would like to point out that if insurance in the generic sense is necessary in our lives today, and I believe it is so that we all have the opportunity to provide for ourselves and our loved ones according to our ability to provide and in accordance with our desires and our needs, that if there is logic to the premise that insurance on an aircraft is a primary motive for a saboteur the logical conclusion to that premise would be the elimination of all insurance during a flight, and such a conclusion would, of course, wreak economic havoc on our great countries and we could not tolerate that conclusion.

If there are any questions, Mr. Chairman, I would be happy to answer them.

The CHAIRMAN: Thank you very much, Mr. Barrett. Could I have a motion that the brief submitted by the Mutual of Omaha Insurance Company and Tele-Trip Company Incorporated be printed as an appendix to today's proceedings?

Mr. WAHN: I move that the brief submitted by the Mutual of Omaha Insurance Company and Tele-Trip Company Incorporated be printed as an appendix to today's proceedings.

Mr. PUGH: I second the motion.

Motion agreed to.

The CHAIRMAN: Thank you, Mr. Barrett. Does anyone else wish to make any contribution at this time?

Mr. ARLESS: Not at this time, sir.

The CHAIRMAN: The meeting is open for questioning. I have on my list Mr. Aiken, Mr. Tolmie, Mr. Guay, Mr. Choquette and then Mr. Whelan.

Mr. AIKEN: Mr. Chairman, I feel that Mr. Barrett has presented us with a brief which discusses almost everything else but the subject that we are considering, the sale of air travel insurance at airports. I am not being critical, but Mr. Barrett has given us five or six other matters that we might look into and, unfortunately or fortunately, we are only considering one, the sale of tickets, which the air line pilots appear to believe could be a causative factor.

I would like to ask Mr. Barrett, first, whether he believes that the air line pilots are wrong in their opinions on this particular subject because they were expressed to us very definitely?

Mr. BARRETT: Mr. Chairman, I believe that the pilots have drawn false and erroneous conclusions because of the information they have received on the background and the chronology of the various crashes. If we can arrive at one clear-stated set of facts on some of the tragedies which have occurred in the past, then I believe we both would have to come to the same conclusion. The pilots, both Canadian and their American counterparts, have used the Graham case in Colorado as a classic example of how flight insurance is conducive to the sabotage of an airplane. I participated in the investigation of that crime; we have studied at great length the testimony given at the trial of this saboteur, and we have reviewed what government records have been made available to the public. Upon studying that information, Mr. Chairman, it is very clear that we had a boy whose mother left him constantly; he was homesick for his mother and he also had a little greed for her newly inherited estate. He travelled up to the countryside, acquired explosives, rigged up a timing device and in some six weeks he concocted a bomb. He assembled the bomb. As he took his mother to the airport on a trip which she was planning to see her sister in Canada, he was able to secrete the bomb into her luggage. That was his crime; that was his planned crime. When he arrived at the airport with his wife, his child and his mother, his mother turned to him, Mr. Chairman, and said: "Now, honey, go over and buy some insurance for yourself, your sister and your aunt." He told the investigators later on in his confession "I had to do that or else somebody would have suspected me." To show you how apprehensive the man was and how incidental it was to his crime, Mr. Chairman, he approached one of our vending machines in the Denver airport and he tried to operate that machine seven different times before he got his partially completed policy. It is most difficult to think that after making all of these extensive plans for six or seven weeks—driving into the countryside and acquiring the timing device—that if insurance were his motive, either primary, secondary or casually,

that he was so ill-prepared and so completely failing in his primary motive that with seven attempts he only got a partially completed policy. If insurance were his motive he only bought \$37,500 worth of insurance; he could have purchased \$75,000. So we suggest, Mr. Chairman, that while insurance was in the crime just as, perhaps, he was wearing a dark blue suit that day, if we had taken insurance out of that picture completely, if there were no machine in that airport, we believe that the crime would have happened just as it did happen.

So, in their classic case, in response to the question from Mr. Aiken, yes, we do disagree with the pilots and we respectfully submit that from false information on these cases they have come to an erroneous conclusion. We highly respect, Mr. Chairman, the pilots' apprehension for safety. Being on those airplanes all the time we want them to fly safely and if we had the slightest scintilla of evidence or thought that this type of insurance was conducive to this crime, believe me, as the father of four, I would be the first one to want it removed from there.

Mr. AIKEN: I would like to put this in another way, Mr. Barrett. I think we know that there are a great many crimes of this kind that are planned but never come off because if they did, we would have a good many more. I am looking at this from a deterrent aspect. Would you not agree that in many cases the final decision is not made until the person arrives at the airport and that the preparations all having been made, one more factor might make the difference whether that person goes ahead or whether he changes his mind and that insurance might be the final determination of whether or not he goes ahead with the crime he has already planned?

Mr. BARRETT: We have not found from investigation, Mr. Aiken, that that is the case. We have consulted, sir, during our ten year investigation of this matter with many psychologists, psychiatrists, suicide experts and others to help us probe into the mind of this individual who would commit such an act. The Chairman and members of the Committee should know that you may secure this type of insurance—this is one of the misapprehensions that exists today—through 200 different sources on the North American continent easier, with more anonymity and with complete privacy than you can by going to a vending machine. You can secure this type of insurance completely through the machine without presenting yourself to anyone. You can get it automatically sometime just by joining organizations and you do not even know you have it until you get your next dues. You can get this by telephoning a local broker down town. You can get this insurance simply by filling out a form in the broker's office. It has been suggested or stated that if it were taken out of the airports and put in broker's offices, it would be economically not possible because brokers cannot afford to carry on this type of business unless they can get close to the source of the market like we have done. So if a criminal or a saboteur, in answer to your question, Mr. Aiken, goes through all of the steps in committing the crime, we do not think, sir, as we would say, that the added plum of a little enrichment at the airport at the last minute as he saw these machines, is the last little step that would push him over the precipice because it is so readily available every place else.

Mr. AIKEN: I do not want to take any more time, Mr. Barrett. I mention on Tuesday that we had in our parliament the exact situation I raised. A man

tried to throw a bomb into our chamber last year, and he had this planned. It is fairly evident from the investigation that because he learned at the last minute that he could get through the security precautions he went ahead and did it, but if the security precautions had been even a little bit tighter, he never would have tried. This is the same sort of case I am trying to raise now.

There is just one other question and then I will pass because I know the others have many questions. I presume that both your companies make money from airport ticket sales?

Mr. BARRETT: In answer to that, Mr. Aiken, we are a mutual company; we are owned by our policy owners and, of course, in order to endure we have to take in more money than we spend. But in this particular area, it is a very marginal operation for us as an insurance company.

Mr. AIKEN: Some companies say and the public sometimes believe that on certain types of insurance they actually lose money but they have to maintain the service. This is what I am trying to find out about this particular operation.

Mr. BARRETT: This is classified as a service type of business and we are not being elementary about it. We feel, in rendering this service to the people, that the people have demonstrated that they want it—by asking for it. We hope to enroll them in our family of policy owners and then, of course, go on and sell them other insurance. We would like to sell them all permanent life insurance if they could well afford it.

Mr. AIKEN: You classify this as one of the lesser of your money-making insurance sales. The margin of profit is not as high as in other lines?

Mr. BARRETT: No, sir. I must report to you that trying to make a profit in the insurance business today is getting increasingly difficult because of our high costs in health care generally. But this particular line, sir, is considered by our underwriters as a marginal line as a service.

Mr. AIKEN: Thank you. I will pass, Mr. Chairman.

Mr. TOLMIE: In view of this statement you have made, do you intend to increase the vending or counter-type of insurance facilities?

Mr. BARRETT: It is our intention, yes, to continue to follow the travellers as air travel develops in this country.

Mr. TOLMIE: Is the marginal income a producing factor?

Mr. BARRETT: Yes, sir.

Mr. TOLMIE: Naturally you have a pecuniary interest in opposing this bill, which is quite understandable. You have inferred that the public, perhaps, cannot be represented at these hearings. I was wondering if you feel that you represent the public's feelings and have you had any representations that your company should maintain or perhaps increase these facilities?

Mr. BARRETT: We have, in our office over the years, unsolicited letters from the public on the matter of this availability. We have constant compliments at our installations around the country and around the world on the availability of this.

Mr. TOLMIE: Have you had any increase in this type of letter since the introduction of this bill?

Mr. BARRETT: In Canada, sir, I do not know, but I am given to understand that we have not had increases here in Canada yet.

Mr. TOLMIE: Have you had any at all in Canada?

Mr. BARRETT: We have had, sir, to my knowledge, unsolicited letters from some of your leading and prominent citizens in Canada as a result of some of the investigations that have been conducted in the United States on this subject, and they have commended us for making this insurance available and for continuing to do so.

Mr. TOLMIE: Do you have letters available from the general public as opposed to prominent citizens?

Mr. BARRETT: Yes, sir.

Mr. TOLMIE: And they indicate that they are quite appalled at the idea that this might be taken away and that they would like to have it retained?

Mr. BARRETT: Yes sir.

Mr. TOLMIE: And you would be in a position to make them available?

Mr. BARRETT: Those are available for you. Further than that, last year we secured the facilities of an independent research organization and asked them to go into the major airports on the North American continent to survey this question with the travelling public. This was both in the United States and Canada.

Mr. TOLMIE: Now, the Canadian Air Line Pilots Association stated that there is little, if any, of this type of insurance, vending or over-counter, in foreign countries. Then the witness went on to state that there were very few, if any, air sabotage incidents in foreign countries compared with North American countries, the inference being that because we have these vending machines and over-counter insurance here in North America, this is a causal factor in air sabotage. What are your comments on that?

Mr. BARRETT: Again, as I mentioned, we should get at the same set of facts. I am sure that the pilots get the same action and reports as we do around the world. There has been sabotage in Australia, sir; there has been sabotage in the Philippines; there has been sabotage in Great Britain; there has been sabotage in Belgium; there has been sabotage in Italy, and in all of those countries there is air-vended insurance in the airports.

Mr. TOLMIE: What I find hard to understand is that a prior witness of the Canadian Airline Pilots' Association stated that if there were any they were well concealed and I would just like to know, for my own information, if there is a facility in European airports comparable to Canadian or American airports.

Mr. BARRETT: Mr. Brady, my associate, is here with me today. He is president of Tele-Trip Company and he has a major installation in the London airport. It is as prominent as any here in Canada or in the United States.

Mr. BRADY: This is the one exclusion, I think.

Mr. BARRETT: Is it safe to say that except for London?

Mr. BRADY: Yes.

Mr. BARRETT: It is vended by machine in Frankfurt, in Paris and in Amsterdam, Holland, which is one of the major terminals in Europe and we have

major installation there. We have to disagree, sir. There has been sabotage around the world, and there is insurance vended in these airports. And, indeed, if I may make the comment at this time, there seems to be a reawakening around the world because we are continuing to receive daily requests from these countries to come over and establish this. We have been asked by Kuwait, Syria, Korea, just in the past three months, whether this type of insurance can be made available in their airports. So there is a reawakening around the world to making this available to their citizens.

Mr. TOLMIE: It has been alleged by other groups that one of the main weaknesses of this type of insurance is its availability and the fact that the purchaser cannot be screened as to stability or his intentions. They go on to argue that this could be done much better if they applied formally through their broker or insurance agent. I think, in your previous statement, that you more or less exploded this argument. In effect, you say that it can be obtained just as easily through other facilities, and there is no screening process whatsoever. Is this your position?

Mr. BARRETT: Yes, sir. As an underwriter we sell it both ways. We sell it through agents and we sell it at the airport. We know the practices of the insurance industry. In your own personal lives I know you people must get mail from the Diner's Club, bar associations and fraternal organizations. There is a flood of this through the mail. I believe that you could call any one individual insurance broker and ask for this type of insurance. The only impedimenta that I would know of as an insurance man, is that when you call the broker he would not have the actual policy in his office, and the reason for that, sir, would be that the premiums involved are so little and his overhead is so high that he does not bother with it because it is too expensive for him to handle for what his remuneration would be. The answer to that, of course, is to get out to where there are a lot of customers or would-be customers, and that is in the airport. But if he is a broker who would like to have everything available for any customer that called, he would have it. He would ask you the same questions that we ask at the airport: "What is your name?"; "What is your address?"; "Who is your beneficiary?"; "Where are you going?"; and these are the underwriting practices of all the major companies both in Canada and in the United States.

It has been said that you would appear before a broker and he would be able to screen you. We have talked to psychiatrists about would-be suicides, and these people sometimes make these decisions two years before they do the act, and when they are in the process of doing the act they appear most calm. We have evidence of suicides making a bank deposit at 10.30 in the morning and destroying themselves at noon; they are very calm. So who could screen them? Could a ticket agent? If a ticket agent could recognize one of these people we should not sell the ticket. An insurance broker is no more possessed of psychic knowledge. Does he appear nervous? It is not a normal insurance practice in Canada or the United States to ask you why, as some have stated, you are buying this insurance. I have been in the insurance business for 20 years and I do not ever recall the question being asked of anyone, "Why are you buying insurance?"

Mr. TOLMIE: That is my initial reaction. I feel exactly as you do, that there would be no more screening involved in buying it elsewhere than by obtaining it through the vending machine. I think what you have done, perhaps, is amplified

and brought out the points which will help the Committee to make their decision.

I have just one more question. I do not think it has been brought out very clearly that air companies themselves have insurance which protects the air traveller. What amounts do they normally carry?

Mr. BARRETT: The air line companies?

Mr. TOLMIE: Yes, the air line companies.

Mr. BARRETT: To cover the individual passenger?

Mr. TOLMIE: Yes.

Mr. BARRETT: Sir, the average air line company here in North America carries what is called liability insurance. This is distinguishable; we have to get into the semantics of the insurance business. The air line company would go to an insurer and ask for a policy which would cover the air line company in the event of a crash for a certain amount of insurance per seat on the airplane. So it is called "seat liability" in the insurance trade. Then if there is a crash and if negligence can be proven by each of the individual survivors of a passenger on a plane, this insurance then is available to the air line company, up to the amount per seat that is selected, to reimburse the airline company for whatever amounts they are forced to pay out either by court order or by agreement, or by compromise as the result of a negligent act. But it is not an automatic insurance provision.

Mr. TOLMIE: It would not protect the passenger against sabotage because the passenger would not be able to prove that there was any negligence on the part of the air line company?

Mr. BARRETT: I would defer, sir, to our eminent counsel. I would say no, as an attorney myself. I would say that it would be most difficult to prove an air line was negligent in allowing a bomb to be secreted on the airplane.

Mr. TOLMIE: I think perhaps that this is rather an irrelevant point. If people are going to rely upon insurance obtained by the aircraft company to protect them which does not apply if an act of sabotage takes place, then this actually is not any protection whatsoever, and they would have to rely upon vended insurance or some other type. Perhaps counsel could give some opinion on this.

Mr. BARRETT: Please do not let them rely on that type of insurance for protection, because normally it is not available. It is available to the air line company to reimburse them for whatever amounts are paid after a survivor goes to the trouble of going to court, and carrying the burden of proof through a court proceedings that the air line was negligent in killing them, and then they have to go on and prove the amount and measure of damages and so on. So it is an if, if, if, if situation, compared to the very simple act of the principal himself determining what he thinks his loved ones need, purchasing the insurance and having it, and it is automatic, it is paid—every policy.

The CHAIRMAN: Should we ask Mr. Finlayson or Mr. Blair to assist in answering that, or would you prefer to let your answer stand?

Mr. AIKEN: Mr. Chairman, while the answer is being made I wonder whether we could have any opinion, regardless of all the "ifs", as to whether any

air line accidents have been refused, in the knowledge of counsel. In other words, has there been a case where the company and the insurance company have refused to make payment to passengers?

Mr. G. D. FINLAYSON: I can answer that. In the first place, in addition to what Mr. Barrett has said, in Canada, under the Carriage by Air Act which implements the Warsaw Convention as modified by the Hague Protocol, there is a statutory limit on the liability of an air line for every passenger, and that amount which is set out in the agreement to which Canada is a party, expressed in French francs, works out to be a maximum of something like \$16,000.

Mr. AIKEN: Is this for international flights?

Mr. FINLAYSON: Yes, for anything other than domestic flights. If you have a domestic flight, of course, this restriction does not apply and the air line will have to pay whatever amount a beneficiary is able to have awarded in his favour in a court. But do not forget that in these circumstances you have to demonstrate liability on the part of the air line, and you also have to prove what your damages are. It is not a question of life insurance, where you are entitled to the face value of the policy in the event of death and regardless of how you die.

I can give you an example of where an air line refused on a domestic flight to make such a payment. I will not give you the name because it happens to be a client of mine. They refused to consider any question of payment because, unfortunately, this woman turned out to be not legally married to the man who was killed, even though they were living together on a common law basis. They just pointed to the fatal accidents act and said that this type of recovery is only available to a wife, and while you are a common law wife you are not a legal wife. So they are quite prepared to defend these cases if they feel that they are not liable.

Mr. AIKEN: This is a different situation that might arise in any case. I am asking about a case where, on account of sabotage the air line says, "We are not responsible for this accident and we will not pay." Does counsel know of any cases where this has arisen?

Mr. FINLAYSON: I cannot answer that in connection with sabotage. I have never been involved in a case in which there was sabotage.

Mr. FOREST: I have a supplementary question, Mr. Chairman. Do you know of any similar action to the Guay case in Quebec?

Mr. FINLAYSON: I do not know personally.

The CHAIRMAN: Do you have any more questions, Mr. Tolmie?

Mr. TOLMIE: No.

The CHAIRMAN: Mr. Guay, you are next.

Mr. PUGH: Just following that along, the whole purpose of being here today is to answer questions. We are dealing with sabotage, and it would seem to me that any insurance company would have knowledge and a record of refusal by any company to pay where sabotage has been involved. Surely the question is pertinent.

Mr. BARRETT: I believe there are two questions here. On sabotage, other than the saboteur or would-be saboteur, all policies bought at the booths or

otherwise have been paid, and paid very promptly. I believe the question has arisen here, however, on this liability insurance.

Mr. PUGH: Yes, and this is what I am getting at. I do not think there is any question about a policy holder buying from a vending machine where an aircraft has been sabotaged. Those claims have been paid without the fuss of suing, or anything like that. You buy your insurance to cover the trip and if, unfortunately, you are killed, then whoever is named beneficiary or the estate would get the money. There is no question about that. But on the question of liability of a carrier, surely you would know whether, where sabotage has occurred, liability has been denied by the company in regard to claims that have been made.

Mr. FINLAYSON: I can answer that. Arising out of that Ste. Therese crash, there have been actions instituted in the United States against Air Canada, and they are contesting those on the basis of liability. However, I should point out that as far as I know, with respect to actions instituted in Ontario, Air Canada has not disputed liability but they have, in every case, questioned quantum. I personally, have a couple that are coming on for trial in the New Year. So there is nothing automatic about these recoveries from air lines. You have got to demonstrate your case.

Mr. PUGH: Would you say that they are not contesting liability but only the quantum of damage?

Mr. FINLAYSON: They are contesting liability in some of the actions that have been brought in the United States. I do not want to confuse you; these actions in the United States involve not only Air Canada but I think they also involve the manufacturer of the aircraft, and they are taking a joint position on non-liability down there. But up here, in the main, these matters have been settled; some have gone to court and there have been judgments on them. But certainly I do not know of any arising out of that particular crash where there has been disputed ultimate liability in Canada.

Mr. BARRETT: Our company does not sell that insurance, Mr. Pugh; that is a specialized line. As an interested insurance man—and I wish I could check in the official records and report to you further—in the Graham case in Colorado I do believe that the United Airlines the liability carrier and the attorneys for the survivors did come to some kind of a compromise settlement. That is germane to your question of sabotage: "Did the liability carrier pay?" I would be delighted to look it up and enquire of the liability carriers on those few cases that exist and report back to you.

The CHAIRMAN: Will you undertake to do that, Mr. Barrett, at your earliest convenience?

Mr. BARRETT: Yes.

(Translation)

The CHAIRMAN: Mr. Guay.

Mr. GUAY: Mr. Chairman, I would like to ask Mr. Barrett if there is a great demand for this kind of insurance outside of airports. He just mentioned that there were many people who could sell this kind of policy, but is there a great demand outside of airports?

(English)

Mr. BARRETT: Yes, Mr. Chairman, there is a tremendous demand for this insurance, and I would like to expand on my statement. The average businessman, both in the United States and Canada, has many, many opportunities to buy this insurance outside of the airport and can do so for other than one trip or on an individual flight basis. Belonging to the same clubs and associations that I have mentioned, and also through his broker, he can purchase a policy on an annual basis covering him for all aerial flights that he makes—all common carrier transportation that he endures or, indeed, all accidents that might happen to him during the year—and in that area sales are tremendously strong both here in Canada and in the United States.

The problem is that it is usually the man who does not have those facilities just like the pilots who, through their unions and their companies, have large amounts of low-cost insurance made available to them because of their buying power. These same businessmen can take care of that downtown. But it is the individual who makes the occasional trip; it is that 28 year old businessman who, at the last minute, has been asked by his supervisor to please go to Ottawa and check the plant there, and he wants to get ahead in his organization. He is just one man who does not have the amount of permanent life insurance that he needs, and he drops everything and goes. He could not afford to go back downtown and buy it from a broker. He is the type of fellow that we have been selling at the airport. But in answer to your question, sir, there are large sales away from the airport.

(translation)

Mr. GUAY: How many persons do you insure a year approximately, what is the percentage of the passengers that you insure proportionately?

(English)

Mr. BARRETT: In the United States and Canada approximately 22 to 25 per cent of the boarding passengers avail themselves of this insurance.

(translation)

Mr. GUAY: Then, I come back to my first question, what is the percentage of 22 or 25 per cent who take out insurance outside of the airports?

(English)

Mr. BARRETT: I would doubt that very few of them if any, take it outside of the airport.

(translation)

Mr. GUAY: Another question following a question asked previously by Mr. [unclear]. Do you not think it would be easier to force air lines to cover their passengers or would it be possible to force the air lines to do so?

(English)

Mr. BARRETT: Yes, sir, it would be possible to do that. I would suggest to you that if that were done you would be accomplishing just the reverse of what the [unclear] are trying to accomplish, because a would-be saboteur then would have a complete banket of anonymity because the insurance would be automatic. Even though it is, the very existence of this type of insurance at airports has helped greatly in the solution of these crimes because the investigators use it as

an evidence trail. Yes, it would be possible to compel all air lines to provide compulsory insurance.

I would suggest to you, though, that a great study should be made of the economic consequences of such a request because it would be costly, indeed, to require that every 80 or 90 year old grandmother have \$75,000 worth of insurance when she flies when she has no need for it. A twelve-year-old child would have it and the cost would have to be loaded into every ticket, and also it would not take into consideration the needs of the individual. If a man were prudent enough to provide for his own insurance downtown or at the airport, otherwise, this would be superfluous to him each time that he flew, and yet he would be compelled to pay for it. But in answer to your question, sir, yes, legally it is possible to compel them to do it but I would suggest that practically it would be an economic burden.

(Translation)

MR. GUAY: One last question. How many claims do you receive every year out of the 22 or 25 percent of the passengers you insure?

(English)

MR. BARRETT: The claims, world-wide, are extensive. I do not have the number of claims that we have. I could get that information from our various departments and submit it to you. They are considerable. We even had a case where a man was injured riding a camel in Cairo, Egypt, and those are a compensable. I just could not guess at the number of claims. However, I would be glad to find out from our company records and submit it to the Committee.

MR. MCQUAID: Mr. Chairman, could I interject a supplementary question Mr. Barrett, please, in connection with his statement that 22 to 25 per cent boarding passengers in the United States and Canada carry this type of insurance. Evidence was given to us yesterday—and I believe by the Board of Transport—that in 1965 the total boarding passengers at all Canadian airports numbered approximately 5.5 million people, but that the customers served these airports by this particular type of insurance numbered only approximately 400,000 people. That is 400,000 compared to 5.5 million boarding passengers. It actually would be less than 8 per cent. It would not be 5 per cent. How does that compare with your figure of 22 to 25 per cent?

MR. BARRETT: If it is permissible, I would like to have Mr. Arless respond to your question as far as Canada is concerned.

MR. ARLESS: We have always been quite happy, for the purpose of comparing figures, to use the emplane passenger figure which does not necessarily reflect the number of people who are using the service. I tried to illustrate in my submission that the person ticketed from Montreal to Vancouver, with an intermittent stop at Winnipeg, and back would be an emplaned passenger three times, and that is the figure that the Department of Transport is presenting. Every time they lift a part of his ticket he becomes an emplaned passenger, but he is still our insured all the way through that trip. Our insurance covers him for the itinerary of the trip for which he is ticketed.

MR. MCQUAID: There and back?

MR. ARLESS: Yes, there and back, with intermittent station stops in between. So, as I said, it is difficult to give you an exact figure because we have no way

knowing what these stops are. But, in our experience, it is estimated that between 20 and 25 per cent of the users of aircraft take advantage of the insurance facility at airports.

(Translation)

Mr. CHOQUETTE: Sir, just one question which may seem humorous to you at first glance, but which has disconcerted the sponsors of the bill which we are dealing with today. I asked Mr. Basford if he would not consider as an additional means of security to install on the distributing machines an electronic apparatus, now in use in certain banks, which takes a photograph of the person who is buying the insurance. I would like to know your opinion with regard to his suggestion.

(English)

Mr. BARRETT: Sir, I do not believe it is quite as humorous as you suggest because we have considered it as an additional step, another means of security. In concert and harmony with the Federal Bureau of Investigation and others we have discarded the idea because a man can, as we have said many times, secure his insurance everywhere. We have not found a case where just that problem of buying insurance, and that problem alone, was contributing to sabotage. While in his instance we take his picture, if he does walk up to a machine, it is not as anonymous as it looks. He leaves his fingerprints on the policy and he leaves handwriting which points to him, even if he uses an assumed name. So he leaves a tremendous number of clues. I would suggest to you that the F.B.I. cracked the Graham case in Colorado because they were able to find the insurance policy, and with that, and just that alone, they went to the man and said, "Now, do you want to tell us about this"? They had no information other than that, and he broke down and confessed. We do not feel that it is enough of a deterrent to justify the expense of putting pictures in there.

Mr. RYAN: I have a supplementary on this point, Mr. Chairman. Would it not help in cases of undue influence? Suppose a man took his mother or even a non-relative and was having them make out an application in his favour or someone in whose favour he wanted it made out, then would a photograph not be very helpful in the trail of evidence?

Mr. BARRETT: That could very possibly be, sir. We have not run into that as yet, because on all machines in North America it is prominently displayed on the machine that the personal signature of the insured is required, so that the insured himself has got to be out there now—this is following the Graham case—and if someone is under duress or being forced to do this—

Mr. RYAN: Or hypnotism, or something like that.

Mr. BARRETT: Yes, or hypnotism—it could conceivably be that in that regard we would consider it.

(Translation)

Mr. CHOQUETTE: That is about all I wanted to ask you, and frankly, I agree with the conclusions expressed in the briefs presented this morning, because I do not see how suppressing these distributing machines could be an additional security measure. In conclusion, may I thank you for submitting your briefs in both languages, though I may make a remark which will certainly help you,

Mutual of Omaha, the translation of your report—I don't want you to take this as an insult—but I notice your translator had taken the English text and made a word, it is not a good translation. I am telling you this in view of helping you out anywhere. Therefore, I would encourage you to have a good translator at your service, a French speaking one, because this is a literal translation, it is word for word, it is not a good translation. I am telling you this in view of helping out and as I agree with you in your conclusions, I would like to help you to the very end in your good work.

(English)

Mr. BARRETT: Thank you, sir, for your very kind words. Let me assure you that after last Thursday, Friday, Saturday and Sunday morning, when we not only struggled to get this translated, and properly, into French, and indeed had to find a French typewriter in Washington, D.C., things are going to be different in our office. I hope that we do not come back under these same circumstances but on a more friendly note. Thank you sir, for your remarks.

Mr. WHELAN: Mr. Chairman, first of all I would like to ask whether financial statements are available from both of these companies for their operations in Canada?

Mr. BARRETT: Yes, sir, they are on file.

Mr. WHELAN: Do either of these companies have to re-insure with other companies in Canada?

Mr. BARRETT: Most of this business, sir, throughout the world is re-insure into Lloyd's market in London.

Mr. WHELAN: Both companies?

Mr. BARRETT: Yes, sir.

Mr. WHELAN: On page 9 in your brief you say:

Sales surveys conducted by our Companies reveal that the bulk of sales of this type of insurance is being made to young and middle-aged business men upon whose efforts the economic life of our countries depend. Yet these are the same people who in establishing homes and rearing families can least afford large quantities of permanent life insurance protection.

You intimate that the young and middle-aged people are the people that the nation depends on, and I agree with you on that. But I believe you more or less pointed out in your answer to Mr. Guay's question that the young business man would be foolish not to carry a policy all year round, so that no matter where he is he would be covered. Is it not true that his vulnerability to an accident is much greater in nearly any place other than in an airplane? He is safer in an airplane than he is anywhere else.

Mr. BARRETT: I could not possibly agree with you more as a professional insurance man. The problem is human nature. I have a casual associate who was employed by an insurance company, so if anyone should know what he should have he is one. He had five small children; he was 31 years old; and he was not required to travel in his business. He took a personal trip on a Friday night and died in an airplane crash. He had \$15,000 worth of company group life insurance. That is tragic.

Mr. WHELAN: He had no accident insurance?

Mr. BARRETT: No. Even the insurance men, I have got to confess to you, sir, who know these products, are some of the poorest purchasers of them. There is always that colour television set; there are always payments for that boat, and they say they will do it tomorrow—and besides, they ask: "Am I going to get killed?"

I agree with you. He is safest in the air. We are in the most trouble when we are in an automobile. Our statistics can prove to you that in the bathroom or the basement of your home tonight is where most of us lose out. But in this particular area, it is the finality of the act. You cannot convince the average human that he is going to be in a car accident. Talk to anyone, and he will say, "No, I drive carefully. It is just those other crazy nuts." But try to convince a man—I have been trying for 20 years—that he just does not have an apprehension of an act of God, or the weather, or whatnot, every time he gets in that aeroplane.

Mr. WHELAN: I might say that I sold casualty insurance for $7\frac{1}{2}$ years part time and was the director of a casualty insurance company. I do carry a policy, and I would say that it is much cheaper than buying these trip policies at the airport, and this is why I am a little amazed that you say you do not make a good profit on the operation of these machines.

Mr. BARRETT: It appears as though there might be a good profit, but we have to pay for our rental facilities at the airport, the personnel, the girls, 24 hours staffing, the policy itself. As an old underwriter, you would know that as we send the policy it is an expensive document to prepare with all those carbons and so on. In addition, the re-insurance into the London market is getting more expensive.

Mr. WHELAN: But actually your risk on a short trip, say between Windsor and Ottawa, where I travel twice every week, is very limited for the amount of money I am paying. I am actually in the air less than $2\frac{1}{2}$ hours; my trip is complete in $2\frac{1}{2}$ hours and I think that is an exorbitant rate for insurance for that much time. There are no human bodies involved in that policy hardly at all.

Mr. BARRETT: It would appear that the rate is high for the particular risk that you are mentioning.

Mr. WHELAN: I would agree, comparing it with a straight year-round policy.

Mr. BARRETT: Suppose you made a trip from Ottawa to Montreal; you would pay "x" premium for this vended insurance. Behind you would come a man who bought a ticket from Ottawa to Montreal, to New York City, to Washington, D.C., to Pittsburgh, to Montreal, to Ottawa, and he has the ticket in his hand—and this gets back to that loading question that we brought up—he gets the coverage at the same rate and so where the rate appears to be exorbitant for you, for him we certainly are underpriced, are we not, because of the landing and take-off.

Mr. WHELAN: Actually, the person taking the trip that I suggested would be subsidizing the other person.

Mr. BARRETT: Yes, but that is part of the—

Mr. WHELAN: You have a bit of socialism in your insurance company.

Mr. BARRETT: As an old underwriter, you know that spreading the risk is part of socialism.

Mr. WHELAN: Can you compare the rates that you pay for the right to sell insurance in our airport terminals in Canada with other countries, particularly in the United States? I am basing this question, gentlemen, on an article in *Maclean's* last fall—and I might say I nearly drafted a private member's bill after reading that article, but I decided not to—where they pointed out that we were allowing you a good rate in our airports compared to the rate laid down in the United States for this.

Mr. BARRETT: Yes and no, I would say, sir. The rates in the United States are getting closer and closer to your rates. We did have some abuses in this area but we are getting much closer.

Mr. WHELAN: We are talking about rental rates and the right to put vending machines in the airport, and the percentage that you give back to the Department of Transport.

Mr. BARRETT: The United States are getting closer and closer to you people.

Mr. WHELAN: But they are getting more than we are, in the United States are they not?

Mr. BARRETT: Yes, in some airports.

Mr. WHELAN: You do not have a standard rate for airports, then? You bargain for the right to get in there?

Mr. BARRETT: It is awarded on a competitive bid basis and it is a highly competitive business. But there are not many airports in the United States would suggest, that are receiving the same amounts that you are receiving here in Canada.

Mr. WHELAN: Is there any way we can have a breakdown of those figures to see if we are really getting taken in Canada?

Mr. BARRETT: We certainly will give you what we have, sir.

Mr. WHELAN: How many policies issued from a machine actually are good; that is, the person makes a mistake or does not fill them out properly? Is there a very high percentage of cases where a person puts his policy in the mailbox and gets on the airplane thinking he is completely covered but the policy is no good?

Mr. BARRETT: I would say that it is an incredibly low percentage for the type of machine involved. When I first saw that machine I thought, "That has got to be the most difficult thing ever to work", so I am in sympathy with the question. We have a huge department that does nothing but open these policies and try to re-route them back to beneficiaries.

Mr. WHELAN: I have one question on the Graham case which is on page 1. His mother asked him to buy this policy not knowing at all what he had in mind. Did you pay that family any insurance?

Mr. BARRETT: Yes, all but Mr. Graham.

Mr. WHELAN: She had no way of knowing. She wanted to be covered with insurance and had no way of knowing he had already placed the dynamite charge, or whatever it was, in the plane. In another part you point out that they would notice the weight of the hand luggage. I am a little dubious of that. You could fill a little hand bag full of papers and it would be much heavier than dynamite. I am an agronomist. I was going to say farmer but I will not because here you have to be a professional person or you are not recognized.

An hon. MEMBER: What about a suitcase full of potatoes?

Mr. WHELAN: A suitcase full of potatoes would be heavier than dynamite. You can buy dynamite in so many different strengths, 20 per cent, 30 per cent and so on. We always used the low strength because it was not so dangerous to handle. I would not think that your statement here means much. If you picked up every handbag and said, "Oh boy, that is heavy; that is dynamite", that would not be correct because a lot of things would be heavier than dynamite. I would think even the mechanism of these things—a little clock, or however they make them work—is not that heavy. I think that a crock of liquor in a bag would be heavier than the whole timing mechanism.

Mr. BARRETT: The reason we mention it, sir, is that now, as you know, there is no provision for luggage search. We normally consider that reprehensible, I suppose, on the North American continent, although as you all know we have operated it for years at our customs port of entries where they are looking for something a lot more innocuous than a bomb—these vegetables and plants, decent pictures and things like that. The air line authorities today have no ability to challenge your luggage. In the Graham case it was finally brought out that Mrs. Graham was asked to pay \$15 extra for overweight luggage—one suitcase. If you were an air line ticket agent today you would see thousands and thousands of pieces of luggage coming through day after day, and if one came through on which there was an additional charge of \$15 you would think: "Have you got lead bars or gold bars or something in there?" but you would have no ability to challenge it. You would say: "Where is your \$15?" and it would go on the aircraft.

In the Julian Frank case, this man who lived in New York who died in the crash of the plane off of Bolivia, North Carolina allegedly carried a piece of hand luggage—one of those Air Canada bags—onto the airplane and the F.B.I. said he had to have 13 sticks of dynamite in that hand luggage. Well, if he did—you know, the average things carried in hand luggage, a shaving kit and so on—that luggage strap had to be stretched. I suggest that if airline supervisory personnel, when they get these kind of tip-offs, had the legal authority to say, "Please, sir, if you do not even say it, take it off to the back room and check it, many lives might be saved."

Mr. WHELAN: Do you not agree, though, that there are many things available other than dynamite that actually are much worse? There is a type of hand grenade—and they are available—and a person could get these things if he wanted to and could kill everyone in this room. It sits in the palm of your hand. Forget the correct name of it but it is a very dangerous thing.

Is there any other type of accident insurance which is sold to the public by a machine located, let us say, in bus and railroad terminals?

Mr. BARRETT: There is today in the United States travel insurance available in bus stations. It is the coming thing in motels in the United States.

Mr. WHELAN: Do your surface carriers have a different responsibility toward their passengers than air carriers.

Mr. BARRETT: Generally not. They are common carriers. I am glad you mentioned that, sir. As you all know, railroad ticket agents from time immemorial, at the same time that he sells you a ticket he tries to sell you insurance. It has been tried in bus stations throughout the United States. It has been re-innovated into motels now for travel. We have tried it in the subway stations in New York city but it was not very successful. Another point I should mention at this time is that more and more of this insurance is being sold in the airports. In our particular company it is approaching 28 per cent to 29 per cent of our sales. There is a broad travel accident policy that will cover you in a taxicab en route to the hotel as well as the air flight. So it is not just this one trip type of insurance.

Mr. WHELAN: Do you not think that this policy arriving in the mail to you wife and family every time you take a trip scares them a little bit? Then you have the case of the head of the household who formerly bought an insurance policy everytime he flew but because he ceased to do this his family thinks he does not care about them any more. I use to buy these, but when I was in a hurry to catch a plane I just did not have time sometimes to buy insurance. It takes approximately five minutes to fill out that policy and get change for the machine. Sometimes it is time consuming and you do not do it. Lots of times my wife jokingly would say: "Well, you did not buy insurance the last time. You do not have enough ordinary life insurance if something happened to you to cover your debts that you have because you have been in politics 21 years and you do not make any money."

Mr. BARRETT: Sir, I went through that exact experience and believe me it is much better to buy the insurance than to come home and say: "Yes, I still love you. Yes, I love you as much now." I went through the identical thing myself.

Mr. PUGH: I would like to go back to a statement made by Mr. Arless. In his presentation he stated that studies have proved no motivation or words to that effect. I am interested in what studies were made, who made them; at what insistence they were made, and who appeared? We have heard about psychologists and all the rest but I am just wondering to what depth you went into that. Perhaps you could give a resume on it and then I could question you further.

Mr. ARLESS: My experience as a Canadian operator is not as extensive as Mr. Barrett's and since there can only be one case we can discuss with any certainty in Canada, the Albert Guay case, the testimony of the R.C.M.P. and the trial proceedings necessarily and definitely concluded that there was no connection between air flight insurance and sabotage. It could only be on this one particular case that I could base any of my findings—

Mr. PUGH: I would like to go a little deeper than that because we have a private member's bill before us which is suggesting that we should remove the forms of trip insurance at airports. It would seem to me that when you have studies have proven, you would have to take more than one individual case; you would have to go into this in depth. Mr. Barrett, you are here with a compo-

but is there some sort of an association? Has there been a mass get together to obtain data from which you can base a conclusion?

Mr. BARRETT: There have been surveys of recent vintage that I could suggest to you. One is that your Department of Transport has conducted its own survey on this matter.

Mr. PUGH: Did you obtain knowledge of that survey from statements made on Tuesday here, or have you been in touch with the Department of Transport?

Mr. BARRETT: Previously we tried to maintain contact with them on this matter and Mr. Herb Rogers our resident manager in Canada, discussed this vital matter with them. There have been two rather intensive studies in the United States conducted under the auspices of the Federal Aviation Agency of the United States government. They have a long-sounding title, the Steering Committee of Aviation Industry. On those committees, sir, was every possible person who would be interested, including the air line pilots and the president of the organization in the United States.

Mr. PUGH: Did they take a contrary view?

Mr. BARRETT: They took a view quite similar to your DOT report and indeed the president of ALPA at that time concurred in the report.

Mr. PUGH: Then ALPA disagree with CALPA.

Mr. BARRETT: No. After the captain, then president, had signed that report in which he concurred that there was no relationship we have certainly seen a renewed interest on the part of ALPA that there is a relationship, and I believe if Captain Ruby were here today he would say: "Well, I have changed my mind since I signed the report." No; ALPA and CALPA agree.

Mr. PUGH: Could you summarize the opinion expressed by the two major conference carried on by the F.A.A.

Mr. BARRETT: Yes, sir. There is no relationship between the sale of flight insurance in airports and the sabotage of airplanes.

Mr. PUGH: Do you have the approximate date of those two commissions?

Mr. BARRETT: They were in 1962 and 1964, sir, I think. These dates stick in my mind but I would be glad to get the specific dates.

Mr. PUGH: I mean, they are recent.

Mr. BARRETT: Yes, very recent.

Mr. PUGH: Those are official. Are there any other official get-togethers on this?

Mr. BARRETT: There is a report done by the Stanford Institute which I have not yet seen. It was commissioned by someone I do not know. What few published reports I have seen of that they have come to the same conclusion, that there is no relationship.

Mr. PUGH: Is it possible for us to have that material?

Mr. BARRETT: Mr. Pugh, I will try and find it for you. I would like to get it for myself.

Mr. PUGH: Apart from this, as an insurer, have you made studies in depth other than what has been carried on, shall we say, officially or semi-officially?

Mr. BARRETT: Almost daily. It almost goes on continually between our legal staff, our sales personnel and so on on this subject.

Mr. PUGH: Then is the conclusion you got from all of this is the one stated in your brief?

Mr. BARRETT: If we had one scintilla of evidence, Mr. Pugh, believe me, even though there have only been 9 instances in modern aviation in North America out of the millions of flights that have been made, I assure you as a company executive we would be the first ones to say, "Get it out of there."

Mr. PUGH: I have only one more short question, before Mr. Choquette asks it I was wondering whether these vending machines are bilingual.

Mr. BARRETT: To my knowledge, the machines are not bilingual. As you know, the counter personnel are but the machines as yet are not bilingual.

Mr. ROGERS: Mr. Chairman, at the present time our policies are not bilingual. We do feel rather than print the French policy for a French area that throughout the whole country a bilingual contract should be available; and to this extent the insurance commissioners' meetings have been reviewing the situation for, I think, the past two years to see if we can have permission to drop some of the so-called small print thus allowing us sufficient space to print English and French side by side. We feel the French-speaking person should be able to buy that contract at Winnipeg or Vancouver or wherever he travels.

Mr. PUGH: There is one point I want to follow up. I made a note here of a statement made to the effect that there was little or no connection with crime. I direct this question to Mr. Barrett. We all refer to sabotage as a crime, and there have been established cases of sabotage, but I want to make a distinction between the criminal proper and the nut. I gathered it is mainly a person with a certain dementation who is the cause of this. Do we have any recorded evidence where it is a planned crime?

Mr. BARRETT: Planned crimes, yes.

Mr. PUGH: Planned crime sabotage?

Mr. BARRETT: Yes. The Guay case in 1933 is one, it was planned. The Graham case is one. The National Air Lines plane out of New Orleans is one it was a planned crime. I would believe the jet flight from Chicago to Kansas City was a planned crime—this involved a man under indictment and in financial marital troubles and I would classify that as a crime.

The CHAIRMAN: We have Mr. Ryan, then Mr. Forest.

Mr. RYAN: Mr. Chairman, my question is to Mr. Barrett, through the lawyers present. In cases of air sabotage I would take it that there is no jurisdiction that would permit you to pay out claims to a murderer?

Mr. BARRETT: That is correct.

Mr. RYAN: Is there any jurisdiction that permits you to pay out claims to the beneficiary or beneficiaries of a suicide?

Mr. BARRETT: Under these policies benefits are excluded for suicide.

Mr. RYAN: Right in the policy itself?

Mr. BARRETT: Yes, sir, it is a standard provision of the policy. If suicide were proved to be the case, as happened in one of these instances, we would only be liable for the return of the premium.

Mr. RYAN: If a passenger purchased a policy on a trip from Ottawa to London and return and due to some exigencies that arose he had to go on to Paris and then he returned, possibly, through Shannon, Iceland, the Azores, or some other place or places because of weather and that sort of thing, would the policy that he took out at Ottawa still cover him on the lapse, say, from London to Paris or other place than he spelled out in his application?

Mr. BARRETT: Sir, may I refer that question to Mr. Brady, the president of our sales agency. Some policies differ on this point and I would like to have him express himself and then Mr. Arless, if his is different.

Mr. EUGENE BRADY (*President, Tele-Trip*): Mr. Ryan, the policy covers the transportation ticket that is issued to you before you depart, so that if you did change your itinerary in London and went on to Paris, and you traded your ticket in, had it reissued, revalidated, the policy would cover you back to Iceland or any route you chose to come back to Ottawa.

Mr. RYAN: Is there any limitation on this if you made a very substantial change in your itinerary, say—

Mr. BRADY: There is no limitation.

Mr. RYAN: —if you paid more money to get a ticket that would take you farther, to Istanbul and back?

Mr. BRADY: No, sir, just as long as you followed that procedure.

Mr. RYAN: What about on a domestic flight. Let us say, I went through from Toronto to Atlanta, Georgia and went over to New Orleans, back to Atlanta and then came home. Would I be covered for that section from Atlanta to New Orleans?

Mr. BRADY: The whole trip is all embracing.

Mr. RYAN: Thank you. We had some evidence earlier in these hearings to the effect that the standard risks for accident insurance was something around a 10 to 1 ratio in favour of the insurance company and with respect to air lines, for instance, it was in the neighbourhood of 30 to 1. Mr. Barrett, is this correct?

Mr. BARRETT: I do not follow that, sir. Would you mind repeating it?

Mr. RYAN: Your actuaries come up with the proposition that odds are in our favour roughly 3 to 1 in relation to the odds in favour of the standard insurance accident coverage, because air travel is that much safer.

Mr. BARRETT: We do profess that commercial aviation in North America is the safest way to travel in the world, yes sir. There is no doubt about that.

Mr. RYAN: So what we have been told is substantially true, I take it? It is about 3 to 1?

Mr. BARRETT: I do not know the exact ratio. I would be delighted to look it up for you. I would have to find out what they are comparing it with. If they are comparing it with automobiles it is 4,000 to 1. If we are comparing it with other common carrier means of transportation, 3 to 1 sounds plausible.

Mr. RYAN: It is in our records of an earlier hearing.

Mr. BARRETT: I would be glad to look it up.

Mr. RYAN: I am sorry that I do not have the exact information on it, but that is my recollection of it as the result of an earlier question this morning. I would certainly appreciate having that straightened out.

Mr. BARRETT: All right, sir.

Mr. RYAN: You have told us that there are 9 examples on the North American continent where it is pretty well established that the causes were sabotage. How many examples of sabotage outside North America do you know of, and have they been included in your studies?

Mr. BARRETT: To my knowledge, there are about three dozen in modern commercial aviation history around the world. Of course we would have to get a definition of the term "sabotage" in relation to a commercial airliner. I would suggest for your consideration the incident in Chicago just ten days ago where an air line employee contended that he apprehended a man placing an explosive substance on the airplane, and that he was knocked down by this intruder but forced him to flee. I do not know whether we will ever hear the final outcome of that. There is some cause to believe that it was a so called cock-and-bull story, but do we want to classify that as sabotage or not? If we could have agreement on that we could have the figures for you.

Mr. RYAN: Well, strike any incident like that out of our consideration; just take planes that have actually gone down or have had a bomb explosive in them while in the air, or have been held up in the air at gunpoint, and that sort of thing. I would not think that there are any military cases of sabotage.

Mr. BARRETT: No. We are limited to commercial aviation. I believe that is available for you, sir.

Mr. FOREST: Mr. Barrett, is there any federal or state legislation in the United States limiting insurance available by vending machines or over counters?

Mr. BARRETT: In the 89th Congress, sir—which, of course, has now passed into history—a bill was introduced at the request of the Pilots Association to limit the amounts of insurance that might be made available. That bill did not receive a committee hearing and, of course, died with the expiration of the 89th Congress. I do not know what will happen in the 90th Congress. There are no limitations on the amount. About three or four years ago General Elwood Quesada, who was then the administrator of the Federal Aviation Agency under whose jurisdiction comes two federal airports, the Washington National and the Dulles Airport, for a myriad of reasons—one of which was possible sabotage but that was not his primary reason—caused to be put into the specifications of a request for bid for insurance concessions a limitation on the amount of insurance that could be sold at those two airports. It was an administrative decision by this one administrator. It endured for his term of office. After he left office the limitation was removed by his successor. So there are no limitations by law or administrative fiat in the United States today.

Mr. FOREST: Nowhere?

Mr. BARRETT: No, sir.

Mr. FOREST: You state in your brief that no saboteur has ever profited from insurance by his criminal act. Naturally, sabotage is not very easy to detect. That is only the known cases, and there is only one established case in Canada.

Mr. BARRETT: Yes.

Mr. WHELAN: On page 12 you say:

In two highly civilized countries such as ours with the strict controls on drugs and medicines and growing controls on the use of tobacco, it is incredible that we tolerate seemingly loose controls on the acquisition of explosives and almost nonexistent controls on the disposition of them.

And this is the part that I want to get at, Mr. Chairman:

Second, the strictest of capital punishments for sabotage or attempted sabotage should be enacted by all legislatures and these would-be penalties should be prominently published so that all citizens would be aware of the price they might have to pay for such a crime.

I think you are aware of all the discussion we had here recently about capital punishment. Would you care to tell us just what you mean by that?

Mr. BARRETT: Well, sir, I do believe we have to rise to the issue. I know that the world is now rent asunder about whether capital punishment—the taking of life for a crime—is a proper deterrent in the field of justice and jurisprudence, but if we are going to get at a mind so demented as to destroy an aircraft and 100 or 150 people, what deterrents can we use? Our company believes that if these people knew, and knew well in advance, that they would lose their lives for this crime, this would be a deterrent. In the United States today, for instance, sir, attempted sabotage is only punished by a year in jail.

Mr. WHELAN: You are suggesting the strictest of capital punishment. Some of us believe—I am not saying all of us are of the same opinion, of course—that the evidence presented to us indicated that capital punishment is not a deterrent in any of these crimes.

Mr. BARRETT: I would certainly fall back, sir, to whatever the limit of punishment could be in a given country. What is the limit that we can punish a serious criminal? I think that should be attached to this most heinous of crimes.

Mr. MCQUAID: I have just one question, Mr. Chairman, purely for the purpose of clarification. Yesterday the Airline Pilots Association listed for us our known cases of sabotage in which airline insurance was involved in addition to those listed in your brief, Mr. Barrett. Do you know anything about those other four cases?

Mr. BARRETT: I do not know, sir. In the United States they have listed a Mexican case that I know of where a flaming substance was taken off an airplane; they called that sabotage, but that is more or less attempted sabotage. The cases we have listed are the actual nose-down cases; cases where an airplane was demolished.

Mr. MCQUAID: They say, their listing is extracted from the report of a subcommittee on the relationship of insurance to air line sabotage.

Mr. BARRETT: The difference between our list and theirs would be the non-fatality incidences which they probably have listed, which we do not;

instances in which there was attempted sabotage and the plane was not destroyed, nor people hurt.

The CHAIRMAN: Is that all, Mr. McQuaid?

Mr. McQUAID: That is all, Mr. Chairman.

The CHAIRMAN: Are there any more questions?

Mr. AIKEN: I have one question that is related to the percentage of sales of air travel insurance made at vending machines, counter sales and by agencies. Although we went into this on Tuesday, we got no answer from anyone who was here because they were not in the insurance business. Could we have either figures or percentages on that now?

Mr. BARRETT: For our company roughly 8 per cent of sales are made through vending machines in the United States and Canada. The remaining 92 per cent would be at manned counters. What do you mean by "agencies", sir?

Mr. AIKEN: I meant off the airport.

Mr. BARRETT: It goes into the billions. I do not believe there would be any way of determining this. There is no one central source for reporting those kind of sales; it would be all of the accidental death and dismemberment policies sold by 1,100 companies here in the United States and in Canada.

Mr. AIKEN: Then there is no way of relating the number of policies that are taken out for air-trip insurance except on the airports?

Mr. BARRETT: To my knowledge, that would be correct. There really is no way.

Mr. AIKEN: Is there a trip insurance policy that can be obtained off the airport?

Mr. BARRETT: Yes, sir, many of them.

Mr. AIKEN: Do you have any figures on those alone as related to the airport sales?

Mr. BARRETT: No. Again, you see, what I would have to do is to get the financial report of 1,100 companies, try to ascertain their designation of accidental death policies and then add them all up. I would imagine, from my knowledge of the insurance business, that it runs into the billions of sales.

Mr. AIKEN: Can you give me any relationship between airport sales and off-airport sales for air-trip insurance?

Mr. BARRETT: By far the majority of trip insurance is sold at the airports. You would find very little downtown because of this economic factor that I told you about. You see, out at the airport you can buy this for a minimum of 50 cents and your premium then, depending on the coverage you take, can run up to \$18 at the airport. But I doubt whether you could find any place downtown where you could buy a 50 cent policy, a \$1 policy or a \$1.50 policy.

Mr. AIKEN: Most of the individual trip insurance is sold at airports?

Mr. BARRETT: Yes, sir.

Mr. AIKEN: And other insurance which covers air travel is mostly included in general policies or longer term policies?

Mr. BARRETT: That is correct, more all-accident type policies; it might be a common carrier or a 24-hour accident policy. This is more expensive, of course, but it is excellent coverage.

Mr. AIKEN: Someone suggested on Tuesday that a great amount of the insurance was sold to first-flight passengers. I do not know whether you have any way of knowing whether this is a fact or whether there has been investigation of this?

Mr. BARRETT: No, sir, it is not a fact, and if I may I would like to have Mr. Brady, the President of Tele-Trip, respond to that.

Mr. BRADY: We have no statistics on that particular point.

Mr. AIKEN: This would be merely somebody's guess.

Mr. RYAN: I have a supplementary on the first point that was brought up by Mr. Aiken, Mr. Chairman.

Mr. Barrett, is it not the case that companies such as yours supply policies to the military to cover passengers on military planes, and that the military themselves distribute the applications for you to the passengers, when they have the election of either making the application or not? Is that not an area of some size?

Mr. BARRETT: Yes, sir. We were the first company in the world to offer regular commercial-rated flight insurance to military aviation. We offered it first to the United States military air transport service. Almost immediately thereafter we recognized your transport service—it was the second one—and today military passengers of Canadian and United States armed forces can buy an insurance policy from our company, which will cover him on any type of military aircraft anywhere in the world except a combat craft.

Mr. RYAN: At the same rates—

Mr. BARRETT: Yes, sir.

Mr. RYAN: —as commercial passengers. Could we have a breakdown between the military passengers and the commercial passengers?

Mr. BARRETT: What could I give you? Do you want the total number of military flying and how many of them purchased the insurance?

Mr. RYAN: That would be all right, or else a percentage of your business related to premiums, just to give us an idea.

Mr. BARRETT: All right, sir.

Mr. PUGH: Carrying on with Mr. Aiken's question, you mentioned that to get the figures off-airport as against airport sales, you would have to contact 1,100 companies and make a "guestimate" on that. Could you give us the figures for your own company? You are in this in a large way. What is your regular travel accident policy sales by per cent as against airport sales. Is that a fair question?

Mr. BARRETT: It is a fair question, Mr. Pugh, but I would have to guess now without checking the company records.

Mr. PUGH: Can you say whether it is a substantial portion or a small portion in relation to airport sales?

Mr. BARRETT: It is a substantial proportion.

Mr. PUGH: It is a substantial proportion of your total accident sales business, whether off the airport or not?

Mr. BARRETT: Yes, sir, it is.

Mr. PUGH: Mr. Chairman. I think we should have a specimen form for our records.

Mr. BARRETT: Certainly.

The CHAIRMAN: Thank you.

Mr. BARRETT: Mr. Chairman, Mr. Pugh asked earlier about some United States federal documents, and one of my associates passed them up here. The title of the committee conducting the surveys that you were asking about, sir, is the Government Industry Steering Committee on Airline Sabotage as appointed by the Federal Aviation Agency. There are two studies: one is dated March 8, 1963, and one is dated June 1, 1965—the second brings the first up-to-date—and they are issued by the Federal Aviation Agency on a need-to-know basis. I am sure your Committee would be well qualified to be a need-to-know committee.

Mr. PUGH: I think the importance is that it is not a generality on aviation, but is directed specifically towards sabotage.

Mr. BARRETT: Yes, sir. I am sure your Committee would be most competent to receive a copy of the studies, if you find them necessary.

The CHAIRMAN: I would like to ask Mr. Finlayson or Mr. Barrett just one question. Have they ever heard of a settlement of damage claims in airplane crashes where the doctrine of *res ipsa loquitur* has been the determining basis?

Mr. BARRETT: The doctrine of *res ipsa loquitur*, as I understand it, applies in the case either on takeoff or landing, of aircraft and certainly it was applied in one case that I know of called *Malone vs. T.C.A.* which arose out of an accident in Manitoba. I do not think there is any question that the doctrine applies but, as I say, its application so far has been restricted to aircraft either taking off or landing.

The CHAIRMAN: Do you see any reason why it should not be applied to a crash or an incident which happened in flight?

Mr. BARRETT: I could not. As a matter of fact, I was involved in a case in which I thought that issue might go to trial, and I did take the position that it applied to an aircraft in flight. However we settled the matter anyhow, so the matter has never been really resolved by the court.

The CHAIRMAN: A good settlement is always better than a good lawsuit.

Gentlemen, I have been handed correspondence from the Department of Justice. It includes a letter from Mr. Grant to the Minister of Justice dated October 7 of this year; in that letter Mr. Grant expresses his definite disapproval of the present system of flight insurance, and he then proceeds to set out his reasons for such a statement. Then there is a letter to Mr. Grant from the Director of Airports and Field Operations of the Department of Transport dated October 31, 1966; a letter from the Department of Justice to Mr. Grant dated October 13, 1966, and a further letter from Mr. Grant to the Department of

justice dated December 5, 1966. Mr. Grant again repeats that he is not satisfied with the sale of flight insurance in the airports, and he requests that both his letters be referred to this committee. I think that probably we could make this correspondence an exhibit and file it with the record. Mr. Grant asks that copies of our proceedings be sent to him, and I take it that the Clerk will attend to that, and further in that connection, and as it is mentioned specifically by Mr. Windsor, the Department of Transport have received a very substantial number of similar letters. Is that correct Mr. Windsor?

Mr. WINDSOR: Well, no that is not quite correct, Mr. Chairman. What I intended to convey was that we would search our files for other letters and any of them that may not be privileged documents we would be inclined to turn over to you, sir.

The CHAIRMAN: Thank you for that correction. Is it agreed that the correspondence I have mentioned and the specimen form of contract, which will be added to the Clerk, be made exhibits to the proceedings of today?

Some hon. MEMBERS: Agreed.

Mr. PUGH: Mr. Chairman is there a suggestion that some departments have received voluminous mail?

The CHAIRMAN: Dr. Windsor is here; he can answer that question.

To your knowledge, is there a voluminous mail on this subject from the public?

Mr. WINDSOR: No. I have been in my present position, approximately 18 months and I only recall two instances.

The CHAIRMAN: Before adjourning the meeting, I of course wish to thank Mr. Arless, Mr. Barrett, Mr. Finlayson and the other gentlemen who participated in this discussion, for their full and frank disclosure of varied information in regard to this subject matter. I think it was a very informative meeting. We have a much better understanding of the problem now than we had at the beginning. We are much indebted to these gentlemen for that information. May I call to the attention of members of the committee the suggested trip to the National Research Council on Tuesday, December 20th in the forenoon, for the purpose of examining and having explained to you the machines that have been prepared by Dr. Gibb, with reference to taking breathalyzer tests.

The meeting stands adjourned.

APPENDIX 17
SUBMISSION

of

MERCURY INTERNATIONAL TRAVLSURANCE AGENCIES LTD.

to

The Standing Committee of the House of
Commons on Justice and Legal Affairs

on

The Resolution Proposing the Prohibition
of the Sale of Insurance Through Vending
Machines at Airports

December 15th 1966

I. This company has carried on the business of an agent selling travel trip and other accident insurance at Canadian airports since 1954. Its head office is in Montreal and it is owned, controlled and managed by Canadians.

This company sells travel trip and other accident insurance at counters at Ottawa, Dorval and Halifax airports. In previous years, it has operated such counters at other major airports in Canada. Vending machines operated by this company are located at thirty-four (34) airports in Canada.

II. Preliminary Statement

The consideration of this resolution proposing the prohibition of the sale of insurance by vending machines at Canadian airports reflects the natural concern of all Canadians about the consequences of aircraft accidents. It is common ground that any and all reasonable steps should be taken which might prevent such disasters in the future. It is perhaps unnecessary to add that insurers have a special interest in the prevention of these tragedies.

While there is and will continue to be general support for any proposal which might effectively prevent aircraft accidents in the future, the adoption of any such measure can only occur if two basic conditions are met:

(1) The proposal should not adversely affect the interests of the public as a whole and subject the public to unnecessary inconvenience and risk of loss.

(2) It must be demonstrated that the proposal will, in fact, accomplish the stated purpose of preventing aircraft accidents.

It is respectfully submitted that this proposal will not meet either of the two basic conditions stated above. Accordingly, it is respectfully requested that the proposal not be adopted or approved.

(3) The resolution is not in the public interest and is contrary to the public interest.

(a) Reason for sale of insurance at airports

There has always been a lurking inherent fear of flying even in the most experienced air traveller. This accounts for the practise which has become universal of selling travel trip and related types of accident insurance at airports.

The availability of such insurance is of great benefit to the public. Relatively few travellers travel enough or are sophisticated enough to acquire permanent insurance coverage of this type. In addition, many flights are made under hectic or emergent conditions and experience has demonstrated that many travellers do not think of insurance until they arrive at an airport or simply have not got time to arrange it before.

b) Use made of insurance facilities by the public

The importance and acceptability of this type of insurance service is demonstrated by experience. It is estimated that one out of every ten (10) airline passengers avails himself of the service.

The travelling public which by its very nature is incapable of being organized and being heard in these proceedings has clearly demonstrated its support of the service. The interests of the travelling public should not be overlooked.

c) Protection of travelling public

Although measured by any objective statistical standard, the incidence of fatal airline accidents is fortunately rare, when such accidents do occur, a demonstration is provided of the protection given to the travelling public by this type of insurance in the many millions of dollars paid to beneficiaries.

Whatever the cause of these fatal accidents, it will be readily recognized that the availability of this type of insurance coverage has done much to mitigate the consequences of these disasters. It has provided security for the dependents of the victims of the accidents. It would appear to be a serious step to limit the opportunity of airline passengers to obtain this type of protection.

d) Necessity of avoiding discrimination and providing equal availability for insurance

At the present time travel trip insurance is available at counters only at the eight (8) largest airports in Canada, namely, Dorval, Malton, Vancouver, Winnipeg, Calgary, Edmonton, Halifax, and Ottawa. At certain medium-sized airports such as Quebec City and Saskatoon, such insurance is sold by U-drive firms. In the vast majority of Canadian airports, the only source of such insurance is through vending machines located at the following airports:

Whitehorse	Lethbridge	Grande Prairie
Brkton	Regina	Churchill
ie Pas	Thompson	Dauphin
orth Bay/Lynn Lake	Flin Flon	Brandon
rt William	Windsor	Ottawa
iebec City	Sudbury	Dorval
sguenay	Seven Islands	Grindstone
Sdney	Moncton	Fredericton
ier Lake	Yarmouth	Stephenville
enton	Goose Bay	Halifax
nder	Charlottetown	Summerside

This is the only economically feasible method of providing for the sale of such insurance at smaller centres where the volume of business does not justify and cannot support the employment of full or part-time staff.

The prohibition of the sale of such insurance through vending machines would result in substantial discrimination against the users of airline services at smaller airports. It would put it beyond the range of a substantial segment of the travelling public to acquire what has been demonstrated to be necessary and important protection.

III. *The Prohibition of the Sale of Insurance Through Vending Machines at Airports will not Contribute to the Reduction of Air Accidents*

It should be emphasized that the fatal accident rate for scheduled air transport has now been reduced to very low proportions and statistically is in the order of .6% fatal accidents per 100,000,000 passenger miles flown. When such accidents occur, extensive and detailed investigations are made as to the causes of the accident and in a large majority of cases it has been possible for the cause of the accident to be determined. The major causes of accidents are human error, mechanical or maintenance defects and the existence of unusual or unexpected flying conditions which have been a factor in certain crashes of jet aircraft in recent years.

Aircraft sabotage has been described by a prominent United States authority as "one of the most pernicious problems faced by law enforcement officials. No one has been able to find a method to forestall sabotage, and the day will probably never come when we will be completely free from sabotage."

In the United States, the problem of aircraft sabotage has been exhaustively studied by the responsible federal agencies and the aviation industry for a period going back at least as far as 1955. A special government-industry steering committee for airline sabotage on which government agencies, the aviation industry, the Federal Bureau of Investigation and the Air Line Pilots Association were represented, prepared an interim report on March 8, 1963. This report concluded that there was no definite relationship between sabotage and air trip insurance. The committee found that there was no ground for suggesting that future sabotage attempts would be eliminated if air trip insurance was abolished any more than it could be said that past acts of sabotage would not have occurred but for such insurance. The report also stated:

"In this connection we are aware of the suggestions that the ready availability of air trip insurance placed it in a category different from other insurance in that a person may, on the spur of the moment, take out a large amount and thereafter sabotage the aircraft from a profit motive. However, bombs are not constructed on the spur of the moment and we do not believe that this factor is of sufficient weight to support the view that trip insurance should be eliminated."

It is perhaps significant that the second report of this committee submitted on June 1, 1966 does not even mention air trip insurance but rather deals with methods of detecting and preventing attempted sabotage.

In the case of aircraft disasters caused by sabotage, it has been found that the motives of saboteurs have been complex and cover the whole range of human weaknesses including love triangles, business failures, murder and suicide.

mania. In some, but not all instances, greed for money has been a factor but not the dominant factor. Faced with the complex and perverted motivations of intending saboteurs, it seems clear that the elimination of readily available air trip insurance is not likely to deter them. In most cases, where insurance had been acquired by saboteurs, it was not even purchased at airports. The planning of sabotage implies deliberation and preparation and it seems unlikely that the whole scheme would be made to depend on the chance that insurance might be purchased at the last minute at an airport before the departure of the aircraft.

It should be noted that the only case in Canada where sabotage has been proven, the *Guay* case, it was established beyond doubt that the aim of the saboteur primarily was to get rid of his wife. There was evidence that the saboteur attempted to murder his wife in some other way before embarking on the fatal scheme. The whole project was carefully planned including the construction of the bomb which was placed on board the aircraft. The saboteur was the beneficiary of a regular \$20,000.00 life insurance policy held by his wife. The purchase of \$10,000.00 of air trip insurance by the saboteur at the airport appears to have been almost an after-thought and was in no sense the main reason for the tragedy. Exact analysis of similar disasters in the United States has indicated that, in the same way, the purchase of air trip insurance was but an incidental part of a total sabotage scheme.

V. Conclusion

It is respectfully submitted that the experience of the aviation industry indicates that air trip insurance is something which is beneficial to the public and which the public wishes to purchase. All objective studies have concluded that the availability of air trip insurance at airports cannot be said to be the main motivation or reason for sabotage. It, therefore, follows that the public at large would be greatly penalized and inconvenienced by any attempt to restrict the sale of such insurance without any demonstrable compensating benefit in the control and prevention of sabotage.

All of which is respectfully submitted this 15th day of December, 1966.

APPENDIX 18

BRIEF

Submitted by

Mutual of Omaha Insurance Company
and Tele-Trip Company, Inc.

before

Justice and Legal Affairs Committee
House of Commons
Ottawa

December 15, 1966

My name is James E. Barrett, Executive Vice President of the Mutual of Omaha Insurance Company. With me today are Mr. E. R. Brady, President of Tele-Trip Company, Inc., a wholly-owned subsidiary of Mutual of Omaha, and Mr. Herbert L. Rogers, Regional Manager of Tele-Trip Company in Canada.

Tele-Trip Company administers flight insurance facilities throughout Canada and maintains its Head Office for Canada in the Administration Building at the Toronto International Airport.

We welcome this opportunity to present our views on the proposal to be the placement of automatic machines in airports for the purpose of selling flight insurance to air travelers.

First, the record should be clear that my Company, as well as all insurers, are deeply interested in all phases of flight safety and has committed its resources to assisting the many agencies—both public and private—in research to achieve total air safety.

Further, it should be noted for the record that no saboteur or would-be saboteur has ever profited from insurance by his criminal act.

The charge that the sale of such insurance by machine or otherwise in the airports is an inducement to sabotage is a most serious one and should receive the closest scrutiny by our Committee.

In the 33-year history of commercial aviation in the Western Hemisphere there have been nine known sabotages of commercial flights resulting in passenger deaths. When these are measured against the millions of successful flights, one must be immediately aware of the minuscule instances to be discussed.

Of the nine incidents, flight insurance as vended through machines was involved—and then casually—in only two. It would be well at this point to give a brief synopsis of the facts involved in each of these sabotages, since there is much conflict over what really happened in each of these incidents.

October 10, 1933. A Boeing 247-D twin-engine transport, licensed to a company which later became United Air Lines, exploded in midair on a flight

between Chicago and New York with three crew members and four passengers aboard. Although no mention was made publicly of sabotage, explosive experts agreed that the crash was caused by an explosion created by a "foreign" explosive substance. No insurance was involved as far as is known.

September 9, 1949. A Canadian Pacific Airlines DC-3 exploded in midair outside Quebec City. Nineteen passengers and four crewmen were killed. Upon investigation it was determined by the authorities that a passenger aboard the plane was persuaded by her husband to take an air trip and he succeeded in placing a bomb in her luggage. His confessed reason for this crime was to do away with his wife so that he could marry another woman.

He had taken out a total of \$30,000 worth of insurance on his wife's life. Only \$10,000 of this was purchased at the airport. The other \$20,000 was regular life insurance purchased through normal channels.

November 1, 1955. A United Air Lines plane exploded in midair near Longmont, Colorado, causing the death of 44 persons. John Gilbert Graham was arrested, tried, and executed for murder as a result of this sabotage. His mother was a passenger on the plane, and he confessed to authorities that he had secreted a bomb in her luggage. He told authorities that he committed the crime in order to keep his mother from "leaving me so much." There were other indications in his confession that he desired to immediately inherit his mother's sizable real estate holdings.

In his confession, he also admitted that at his mother's request he purchased \$7,500 worth of flight insurance from a vending machine in the Denver Airport. The records of the trial show that Graham's mother requested him to purchase insurance making himself, his half sister, and his aunt the beneficiaries. Graham admitted making the purchases because he was fearful that failure to do so could lead investigators to him.

A thorough study of the records of this crime would lead any reasonable person to conclude that the crime would have occurred regardless of the presence of flight insurance in the airport.

July 25, 1957. A portion of the fuselage of a Western Airlines plane was blown out in flight near Daggett, California. A passenger was blown through the plane and fell to his death. No other injuries were incurred. Subsequent investigation revealed that this passenger had entered the washroom of the airplane shortly before the explosion took place. It has been presumed that he secreted a bomb in his hand luggage.

Insurance records reveal that he had purchased \$150,000 in air trip insurance from an insurance counter immediately before his flight. He had sustained sizable gambling losses in Nevada just prior to the flight.

November 16, 1959. A National Airlines DC-7 disappeared en route from Miami, Florida, to New Orleans, Louisiana. The flight was observed on radar and disappeared from the scope. During search operations, debris and bodies were recovered from the Gulf of Mexico at a location approximately 90 nautical miles southeast of New Orleans. Exhaustive efforts to locate the aircraft were unsuccessful.

One passenger, a Dr. Spears whose name was on the passenger list, was later found in Phoenix, Arizona. This man had a long criminal record and he admitted

that another man, whose car he was using when apprehended, had taken his place on the flight. Although it has been impossible to prove that the aircraft was disabled by a bomb explosion, substantial evidence supports this conclusion.

Dr. Spears held a \$100,000 annual accident insurance policy purchased a year previous from an insurance broker.

January 6, 1960. A National Airlines DC-6B crashed near Bolivia, North Carolina, as the result of an explosion of a bomb in the passenger compartment. To date, the investigation has not revealed the identity of the person or persons or the motive for placing the bomb aboard. However, one of the passengers Julian Frank, was insured for approximately \$1,000,000 from all sources, with the bulk of the insurance being regular life insurance or transportation insurance other than air trip insurance.

May 22, 1962. A Continental Airlines Boeing 707 crashed at Unionville, Missouri, killing 45 persons. According to press accounts, the F.B.I. asserted the crash was caused by a dynamite explosion. From the same source, it appears that one of the passengers obtained air trip insurance in an amount of \$300,000 prior to the flight. The passenger was said to have been despondent and to have talked of killing himself rather than face certain criminal charges pending against him.

May 7, 1964. A Pacific Air Lines F-27 crashed near San Ramon, California while en route from Reno, Nevada, to San Francisco, California. Forty-one passengers and three crew members died in the crash. An analysis of the Oakland Approach Control tape indicated that the First Officer was reporting that he and the pilot had been shot. A subsequent investigation revealed that one of the passengers had purchased a revolver on May 6, and this revolver containing six empty cartridges which had been fired by the weapon, was found in the wreckage.

The passenger, Frank Gonzalez, had purchased \$105,000 worth of flight insurance at the insurance counter in the San Francisco Airport on the evening of May 6. Gonzalez was deeply in debt and addicted to gambling and was said to have had serious marital troubles.

July 8, 1965. An explosion in the rear lavatory of a Canadian Pacific DC-6B caused this plane to crash, killing 52 persons. To date, investigation has failed to show anything more than that a foreign explosive force caused the plane to disintegrate. Investigators did, however, focus their attention on the passenger who was noted for his gambling and who had purchased flight insurance totaling \$125,000 before the flight.

It is our feeling that a review of these nine sabotages, as compared to the millions of flights made in the past thirty years, does not justify the serious charges placed against this type of insurance coverage. On the other hand, if every passenger and crewman, insurance officials everywhere are most anxious to insure that every plane which takes off can land safely, and devote all efforts towards this objective.

Would, as some officials in the pilots' organization say, the banning of flight insurance eliminate or even deter a would-be saboteur?

A careful study of the recited records would certainly indicate "no." Flight insurance, whether purchased from a machine or over the counter from licensed personnel, appears to be only an afterthought of the would-be saboteur and the prime motive for his crime. Rather, age-old human weaknesses, such as

triangles, greed, business failures, and suicides, have been and probably will continue to be the motives behind these horrible acts. It has not been possible since the acts of men have been recorded to eliminate or even curb these motives. So those concerned with flight safety must necessarily look to other means to prevent the destruction of modern day airliners.

Insurance as sold today in the airports of Canada and the U.S.A. exists because of a popular demand by the passengers. Passengers cannot be solicited for this insurance, but must approach a sales facility to secure it. As insurance men, we would wish that every passenger could possess a satisfactory portfolio of permanent life insurance but, as everyone in this room well knows, it is not economically possible to do so, particularly at that stage of life when the need is the greatest.

Short-term travel insurance is one of the most popular forms of insurance in the Western Hemisphere today, covering not only flights but all forms of travel. Elimination or severe restriction of this type of insurance could conceivably deter the economic growth of our great countries. Sales surveys conducted by our Companies reveal that the bulk of sales of this type of insurance is being made to young and middle-aged businessmen upon whose efforts the economic life of our countries depend. Yet these are the same people who in establishing homes and rearing families can least afford large quantities of permanent life insurance protection.

After asking these people to endure the inconvenience and hardship of constant travel and the attendant discomfitures of being absent from home and family, are we not penalizing them further by restricting their ability to provide for their loved ones in case of death? One might say that other means of selecting insurance would be available to these people. Such is not the case. The restriction or elimination of low-cost flight insurance in air terminals would penalize that segment of the population who could least afford such penalties, i.e., the young and middle-aged businessmen. Wealthier and more secure persons do have the facilities of insurance brokers and secretarial staffs to secure travel insurance from so-called downtown facilities and usually do make their purchases accordingly. But the young businessman who is striving to succeed in his company and who must be willing and able to make business trips on short notice usually has neither the time nor the economic resources to avail himself of other short-term protection. Therefore, a restriction such as proposed to you would actually hurt that segment of your population who could least afford it.

Would, as some of the pilots say, elimination of flight insurance at the airports have prevented any of the crimes we have reviewed today?

A general consensus of interested parties—both public and private—would be emphatically "no." Recent studies by the Federal Aviation Agency of the United States Government have reviewed this matter in depth. Both reports by the Agency concluded that flight insurance was not a prime motive in any of these disasters.

Would, as some of the pilots say, making insurance purchases more difficult, e.g., appearing before a broker, deter a would-be saboteur?

In the United States and Canada today, large amounts of trip insurance can be secured by mail without any personal confrontation and, indeed, much of this insurance is available automatically with membership in various associations.

Furthermore, an investigation of past tragedies reveals that when insurance was involved, permanent life insurance played a far greater role in the insurance portfolio of saboteurs than did flight insurance.

If it were possible to purchase similar low-cost flight insurance protection from a broker (and such is not the case because of the economic factors involved in the sales), the broker would ask no more or no less questions than are asked on the forms in the airports. Psychologists tell us that would-be suicides resolve their plans of self-destruction oftentimes one to two years before they commit the act, and immediately prior to the act these persons appear perfectly normal.

Criminals ingenious enough to acquire a lethal device, prepare a timing mechanism, and secrete such a device in someone's luggage certainly would be ingenious enough to secure some type of insurance before a last-minute purchase in the airport.

Then what, if anything, can be done to prevent or deter aerial sabotage no matter what the motives?

Control of the means of destroying an airplane *regardless of the motive* is the first step in deterring sabotage. It cannot be logically said that easy access to flight insurance encourages the saboteur, but rather the easier access to the means of destruction might be today's number-one cause. We suggest serious study by the authorities on strict controls of the acquisition and disposition of dynamite as a first step. Dynamite seems to have been a common destroyer in all sabotages to date.

In two highly civilized countries such as ours with the strict controls on drugs and medicines and growing controls on the use of tobacco, it is incredible that we tolerate seemingly loose controls on the acquisition of explosives and almost nonexistent controls on the disposition of them.

Second, the strictest of capital punishments for sabotage or attempted sabotage should be enacted by all legislatures and these would-be penalties should be prominently published so that all citizens would be aware of the price they might have to pay for such a crime.

Third, we might have to come to grips with some type of luggage and personal inspection for flights.

If the posture is adopted that people have a privilege to fly and are granted a license to do so by the purchase of a ticket, it might be necessary that in order to exercise this privilege, passengers be required to permit baggage and personal search by qualified personnel. While such searches are repugnant in freedom-loving countries, they have been tolerated for many years when the welfare and health of the nation are at stake. The customs search as at our nations' borders is an example.

Further, with such permission, airlines personnel could challenge unusually weighty luggage of passengers. In the Graham incident in Colorado, the addition of dynamite to Mrs. Graham's luggage caused that suitcase to be more than fifteen pounds overweight. This should have aroused the curiosity of the airlines personnel checking in this luggage. The hand luggage of Julian Frank had to weight far in excess of the average piece of hand luggage if it did indeed carry the sticks of dynamite which authorities said were probably on board to cause that explosion.

Fourth, research should be conducted by the government and private agencies in the development of a sniffer device to help determine the presence of explosive materials in luggage and upon the persons of individuals.

Fifth, there should be stricter enforcement of already existing laws. If indeed Frank Gonzalez did use a pistol to murder the crew of the Pacific Air Lines plane, he was in violation of a United States Federal ban on the carrying of side arms on commercial airliners. Regardless of his motive or state of mind, Gonzalez could not have committed his crime if it could have been determined that he had the pistol in his possession when he boarded that ill-fated aircraft.

Sixth, research should be continued to advance airplane design and construction so that aircraft might endure an internal explosion. Is it possible, for instance, that the baggage compartment inner skin could be made stronger and constructed in such a way that only that compartment would be destroyed in the event of an explosion? We realize that such construction would necessarily affect the payload capacity of the plane, but this might be necessary if we are to attain over-all air safety.

In conclusion, it is our opinion that all phases of air safety should be a primary concern of all segments of our population, and we join those who are searching for solutions. We caution, however, that elimination or severe restriction of flight insurance would not in any way deter a demented mind, but rather would wreak economic chaos against a broad section of our population. If there is any possible logic in the position of those who advocate restriction on the sale of insurance as a means to eliminate sabotage, the necessary conclusion would have to be the elimination of all insurance on all persons while engaged in flight. Such a conclusion would be intolerable and therefore must be resisted.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations
and/or a translation into English of the French.

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Translated by the General Bureau for Trans-
lation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966-67

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 25

TUESDAY, JANUARY 31, 1967

Respecting the subject-matter of
Bill C-105, An Act to Amend the Criminal Code (Insanity)

and

Bill C-176, An Act to Amend the Criminal Code
(Insanity at Time of Trial)

WITNESS:

the Honourable J. C. McRuer, retired Chief Justice of the High Court
Division of the Supreme Court of Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,	Mr. Guay,	Mr. Otto,
Mr. Aiken,	Mr. Honey,	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Scott (<i>Danforth</i>),
Mr. Fulton,	Mr. Mather,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
		Mr. Woolliams—(24).

(Quorum 10)

CORRIGENDUM

Minutes of Proceedings and Evidence No. 15—Thursday, Nov. 3, 1966
In the Evidence—page 551, line 6
should read "...more than .01%..."
rather than "...more than .1%..."

—page 552, last line
should read "...Muriel Vogel..."
rather than "...Carol Vogel..."

—page 553, line 29
should read "...360 grams..."
rather than "...30 grams..."

—page 561, line 39
should read "...the breath test..."
rather than "...the blood test..."

—page 565, second last line
should read "...remove the vein..."
rather than "...remove the urine..."

—page 567, fourth last line
should read "...did not wash his mouth out..."
rather than "...did not wash his stomach out..."

Minutes of Proceedings and Evidence—No. 24—Thursday, Dec. 15, 1966
In the Minutes of Proceedings—page 839, line 20
should read "...Notice of Motion Number 32..."
rather than "...Notice of Motion Number 2..."

Timothy D. Ray,
Clerk of the Committee.

ORDER OF REFERENCE

FRIDAY, January 27, 1967.

Ordered,—That Bill S-9, An Act to revise and consolidate the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act, be referred to the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

TUESDAY, January 31, 1967.

(29)

The Standing Committee on Justice and Legal Affairs met this day at 11:10 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Guay, Honey, MacEwan, Mather, Pugh, Ryan, Tolmie, Wahn, Whelan (12).

Also present: Mr. Brewin, M.P., and Mr. Munro, M.P.

In attendance: The Honourable J. C. McRuer, retired Chief Justice of the High Court Division of the Supreme Court of Ontario.

On motion of Mr. Pugh, seconded by Mr. Cantin,

Agreed,—That the following documents be made exhibits:

“Proposals for detecting impairment of skill caused by intoxication, sleep deprivation and similar influences”, prepared by Dr. C. B. Gibbs of the National Research Council and classified as confidential. (*See exhibit 27*).

The recall figures of Canadian cars for the years 1963 through 1967 by Kaiser Jeep of Canada Ltd.; Chrysler Canada Ltd.; Ford Motor Company of Canada Ltd.; American Motors (Canada) Ltd.; General Motors Products of Canada Ltd.; Volvo (Canada) Ltd.; which was filed with the Clerk of the Committee by order of the Committee November 31, 1966 when it was holding hearings in Windsor. (*See exhibit 28*)

Letter of October 26, 1965, from Mr. Richard Humphrey, Superintendent of Insurance to Mr. R. Goodwin, Director, Civil Aviation, Department of Transport; Letter of August 20, 1965 from Mr. Gordon H. Stewart, President, Canadian Air Line Dispatchers Association, to the Honourable J. W. Pickersgill; Letter of August 4, 1965 from Mr. Alastair R. Paterson of Manning, etc. to Captain J. H. Foy, President, Canadian Airline Pilots' Association; Letter of August 3, 1965 from Mr. F. A. Walton, Executive Vice-President of Canada, Mutual of Omaha Insurance Company to Mr. R. W. Goodwin, Director of Civil Aviation, Department of Transport; Letter of July 26, 1965 from Mr. C. B. Archibald of C. B. Archibald Ltd., Engineering Consultants, to Mr. Jack Davis, M.P.; Letter of July 20, 1965 from Mr. R. H. Barron, Barrister and Solicitor to the Honourable J. W. Pickersgill;

Letter of June 21, 1965 from Captain W. J. Rodgers, of CALPA, to Mr. R. W. Goodwin, Director, Civil Aviation, Department of Transport;

Letter of October 22, 1958 from Miss Marjorie MacLaughlin to The Superintendent of Insurance; U.S. Report of Government-Industry Steering Committee on Airline Sabotage, and Report of Subcommittee on Relationship of Insurance to Airline Sabotage of March, 1963. Details of Concession Fees from Airtrip Insurance Fiscal Years April 1, 1960 to March 31, 1965 prepared by the Air Services, Department of Transport.

Letter of January 27, 1967 from Montreal Board of Trade to Mr. A. J. P. Cameron. (*See exhibit 29*)

Summary Report—The State of the Art of Traffic Safety by Arthur D. Little Inc. (*See exhibit 30*)

Technical Notes prepared by the Motor Vehicle Accident Study Group of the National Research Council

Tech. Note No. 1, Motor Vehicle Safety—The System

Tech. Note No. 2, Motor Vehicle Safety—The Driver

Tech. Note No. 3, Motor Vehicle Safety—The Driver Alcoholically Impaired

Tech. Note No. 6, Motor Vehicle Safety—The Vectors

Tech. Note No. 5, Motor Vehicle Safety—The Organization

Tech. Note 6, Motor Vehicle Safety—The Vectors

Tech. Note No. 7, Report of the Motor Vehicle Accident Study Group

Tech. Note No. 8, Motor Vehicle Safety, Accident Control. (*See exhibit 31*)

Resolution of Local 444 of the U.A.W. relating to federal inspection during the processing and manufacturing of automotive vehicles. (*See exhibit 32*)

Letter of January 10, 1967 from Mr. R. A. Bartlett, Registrar of Motor Vehicles, Government of Newfoundland and Labrador to Mr. A. J. P. Cameron, Chairman of the Justice and Legal Affairs Committee, communicating a resolution passed at a public conference on Highway Safety in that province. (*See exhibit 33*)

Letter of May 19, 1966 from Mr. F. E. Sloane, Superintendent of Staff and Deputy Chief Constable, City of Edmonton, to Mr. John E. Hart, Deputy Attorney General, Province of Alberta.

Letter of June 2, 1966 from Mr. William Henkel, Solicitor, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.

Letter of May 20, 1966, from Mr. R. M. Anthony, Solicitor, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.

Letter of May 20, 1966 from Mr. J. H. Carpenter, Chief of Police Lethbridge, Alberta, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.

Letter of June 28, 1966 from Mr. R. W. Bonner, Attorney General British Columbia, to the Clerk of the Committee.

Letter of May 31, 1966 from Mr. Gordon S. Gale, Solicitor, Department of the Attorney General, Nova Scotia, to the Clerk of the Committee.

Letter of May 20, 1966 from Mr. Darrel V. Heald, Attorney General Saskatchewan, to the Clerk of the Committee. (*See exhibit 34*)

Report of the Royal Commission on the Law of Insanity as a Defence in Criminal Cases—October 25, 1966. (*See exhibit 35*)

On motion of Mr. Mather, seconded by Mr. Whelan,

Agreed,—That certain corrections be made to the Minutes of Proceedings and Evidence, Issue Number 15—Thursday, November 3, 1966. (*See inside front cover*)

The Chairman introduced the Honourable J. C. McRuer who made a statement regarding Bills C-105, C-176.

It was agreed during the questioning by the Committee that Mr. Brewin, M.P., Sponsor of Bill C-105, and Mr. Munro, M.P., Sponsor of Bill C-176, be invited to question the witness.

The Chairman thanked Mr. McRuer for his most valuable contribution to the Committee's proceedings.

At 1.10 p.m. the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, January 31, 1967.

The CHAIRMAN: Gentlemen, we now have a quorum. I am going to ask the Clerk to read a summary of certain exhibits and I hope someone will make a motion that they be included in our proceedings.

The CLERK OF THE COMMITTEE: It has been suggested that the following be made exhibits:

Re: Bill C-87

Document entitled "Proposals for detecting impairment of skill caused by intoxication, sleep deprivation and similar influences" prepared by Dr. C. B. Gibbs of the National Research Council and classified as confidential.

Re: Bill C-26, C-49, etc.

The recall figures of Canadian cars for the years 1963 through 1967 by Kaiser Jeep of Canada Ltd; Chrysler Canada Ltd; Ford Motor Company of Canada Ltd; American Motors (Canada) Ltd; General Motors Products of Canada Ltd; Volvo (Canada) Ltd; which was filed with the Clerk of the Committee by order of the Committee November 31, 1966 when it was holding hearings in Windsor.

Re: Notice of Motion 32

Letter of October 26, 1965, from Mr. Richard Humphrey, Superintendent of Insurance to Mr. R. Goodwin, Director, Civil Aviation, Department of Transport; Letter of August 20, 1965 from Gordon H. Stewart, President, Canadian Air Line Dispatchers Association to the Honourable J. W. Pickersgill; Letter of August 4, 1965 from Mr. Alastair R. Paterson of Manning to Captain J. H. Foy, President, Canadian Airline Pilots' Association; Letter of August 3, 1965 from Mr. F. A. Walton, Executive Vice-President for Canada, Mutual of Omaha Insurance Company to Mr. R. W. Goodwin, Director of Civil Aviation, Department of Transport; Letter of July 26, 1965 from Mr. C. B. Archibald of C. B. Archibald Ltd., Engineering Consultants to Mr. Jack Davis, M.P.; Letter of July 20, 1965 from Mr. R. H. Barron, Barrister and Solicitor to the Honourable J. W. Pickersgill; Letter of June 21, 1965 from Captain W. J. Rodgers, of CALPA to Mr. R. W. Goodwin, Director, Civil Aviation, Department of Transport.

Letter of October 22, 1958 from Miss Harjorie MacLaughlin to The Superintendent of Insurance; U.S. Report of Government-Industry Steering Committee on Airline Sabotage, and Report of Subcommittee on Relationship of Insurance to Airline Sabotage of March, 1963. Details of Concession Fees from Airtrip Insurance Fiscal Years April 1, 1960 to March 31, 1965 prepared by the Air Services, Department of Transport.

This particular information was requested by Mr. Nielsen at one of our Committee meetings.

Letter of January 27, 1967 from Montreal Board of Trade to Mr. A. J. P. Cameron, Chairman of the Committee.
Re. Bill C-26, C-49, etc.

Summary Report—The State of the Art of Traffic Safety by Arthur D. Little Inc.

Technical Notes prepared by the Motor Vehicle Accident Study Group of the National Research Council

Tech. Note No. 1, Motor Vehicle Safety—The System

Tech. Note No. 2, Motor Vehicle Safety—The Driver

Tech. Note No. 3, Motor Vehicle Safety—The Driver Alcoholically Impaired.

Tech. Note No. 4, Motor Vehicle Safety—The Vehicle

Tech. Note No. 5, Motor Vehicle Safety—The Organizations

Tech. Note 6, Motor Vehicle Safety—The Vectors

Tech. Note 7, Report of the Motor Vehicle Accident Study Group

Tech. Note No. 8, Motor Vehicle Safety, Accident Control.

Resolution of Local 444 of the UAW relating to federal inspection during the processing and mfg. of automotive vehicles.

Re. Bill C-87

Letter of January 10, 1967 from Mr. R. A. Bartlett, Registrar of Motor Vehicles, Government of Newfoundland and Labrador to Mr. A. J. P. Cameron, Chairman of the Justice and Legal Affairs Committee communicating a resolution passed at a Public conference on Highway Safety in that province.

Re. Bill C-118

These letters were received from the Attorneys General of the provinces in response to letters sent out by the Clerk of the Committee concerning Mr. Forest's bill on hit and run drivers. They are quite lengthy, so perhaps if the Committee agrees I will not take the time to read them.

Re. Bill C-105

Report of the Royal Commission on the Law of Insanity as a Defence in Criminal Cases—October 25, 1956.

The CHAIRMAN: Have I a motion that the foregoing be included as exhibits in our Committee proceedings?

Mr. PUGH: I so move.

Mr. CANTIN: I second the motion.

The CHAIRMAN: Any discussion? All those in favour?

Mr. PUGH: Mr. Cameron, what is this about the confidential nature of Dr. Gibbs' report? Can we file that if it is confidential?

The CLERK of the COMMITTEE: This document was classified "confidential" by the National Research Council, but as he made it available to the Committee

think it would be appropriate to make it an exhibit since this is the only way the Committee can use it in their report. This does not make it public. This simply makes it available to the Committee if they wish to use it, but it does not make it available to the public.

Mr. PUGH: Will this be printed in our records?

The CLERK of the COMMITTEE: No.

The CHAIRMAN: It is not printed; it is just an exhibit. With that explanation are there any other comments? All those in favour?

Motion agreed to.

Dr. Rabinowitch wants to make some corrections in the Minutes of Proceedings and Evidence of meeting No. 15. The Clerk will read them and, if you are agreed, we will have a motion that the corrections be made.

The CLERK OF THE COMMITTEE: The corrections suggested are:

pg. 551, line 6

to read... more than .01 per cent...

instead of... more than 0.1 per cent...

pg. 552, last line

to read... Muriel Vogel...

instead of... Carol Vogel...

pg. 553, line 29

to read... 360 grams of alcohol...

instead of... 30 grams of alcohol...

pg. 561, line 48

to read... the breath test...

instead of... blood test...

pg. 565, second last line

to read... remove the "vein"...

instead of... remove the "urine"...

pg. 567, 4th last line

to read... did not wash his mouth out...

instead of... did not wash his stomach out...

The CHAIRMAN: You have heard the corrections that Dr. Rabinowitch would like to have made. Will someone move that they be made?

Mr. MATHER: I so move.

Mr. WHELAN: I second the motion.

The CHAIRMAN: Any discussion? All those in favour?

Motion agreed to.

Gentlemen, it is my great pleasure as well as my great honour to introduce our guest witness of today in the person of the Hon. J. C. McRuer. I might say at the beginning that both Mr. Brewin, the hon. member for Greenwood, and myself were partners with Mr. McRuer for some 17 years until he took his departure from us on becoming a Justice of the Supreme Court of Ontario in November of 1944. That was followed a year or so later by his appointment as Chief Justice of the High Court division of the Supreme Court of Ontario. He is, of course, a distinguished Canadian jurist with an international reputation. At

the present time he is a retired Chief Justice of the High Court Division, and is the chairman of the Law Reform Commission of Ontario. He has headed many commissions and investigations and he is still a very active, very virile man and is doing a tremendous job for the people of Canada. I do not know that I need to say anything more. He has received honours from many, many universities, and I repeat that he is a man of international reputation. It is a great pleasure to me to introduce him to this Committee.

The HON. JAMES C. MCRUER: Thank you Mr. Chairman for the privilege of appearing here. If I can be of any assistance to you I will consider it very worthwhile. The two bills that have been sent to me which you are considering are important bills—the one presented by Mr. Brewin and the other presented by Mr. Munro. I will deal with my observations in regard to Mr. Brewin's bill first.

Mr. Brewin's bill is substantially what is known as the Durham rule which was, in fact, an adoption of the New Hampshire law with regard to the test of criminal responsibility. I think that one has to realize that the law is seeking to test of criminal responsibility that can be put in meaningful words and applied in a meaningful way in a court of justice, and which does not lend itself to a variety of interpretations by a variety of psychiatrists, a variety of judges, and a variety of jurors. And it is a very difficult task to prescribe in words what the test of criminal responsibility should be. In the commission that I presided over longer ago than I like to think—it was in 1954, I think that we were engaged in it and we made our report in 1955—We had the benefit of a very wide survey—I think no other survey had been as wide in Canada, and I do not know of any other place—where we heard the views of psychiatrists from the Atlantic to the Pacific; the views of lawyers, many of whom were engaged very extensively in the practice of criminal law, and the views of judges who had been engaged extensively, in presiding over criminal cases. Unfortunately I have had myself some very distressing cases to preside over, where the matter of criminal responsibility was in issue.

Now I know, although Mr. Brewin brushed it aside, that there is a distinction—a very great distinction in my view—between the M'Naghten rules and the provisions of our Criminal Code. Mr. Brewin may, in a measure, be right because I find that the interpretation now put on the M'Naghten rules in England—and I will quote it to you presently—is just about the interpretation that the majority of the commission thought was the correct interpretation. Now I am not saying that all the Commission did not think it was the correct interpretation.

There are two essential things in the test under our Criminal Code, and one is to appreciate the consequences of the act, and the other that in the interpretation to know that it is wrong.

Now, the conclusion we came to—and you will find this on page 13 of the report—was that the M'Naughton rules were judge made law, and they were not subject to an interpretation act. Stephen, in drafting his Criminal Code from which ours was adopted—Sir James Stephen—used the word "appreciate" instead of "know". "Appreciate the nature and quality of the act", instead of "know the nature and quality of the act". Well now, Sir James Stephen did this in the light of the M'Naghten rules and, after all, the M'Naghten rules were not

new in M'Naghten's case, they go back much farther than that in development. But I give Sir James' statement credit; he understood why he was using the word "appreciate". Dealing first with that branch—"appreciate the nature and quality of the act"—we considered it as having been embodied in the statute, that the Interpretation Act applied, and looking at the purpose of the phraseology that is used we came to the conclusion that you must apply a wide interpretation, as it was a statute that was exempting from criminal responsibility if requirements were met. So it is a beneficial statute and should be widely interpreted. And then when it came to the question of "wrong", to know that it was wrong. Now, in England that is interpreted as wrong according to law. Lord Goddard has laid that down, and that, I think, is a wrong interpretation of our Code. It must be wrong. There must be the knowledge that it is wrong, a capacity to know that it is wrong; not only that it is something the law forbids, but something that is morally wrong to do. If he has the lack of capacity to know that it is morally wrong to do, then he should be found not to be responsible for the act. Now, I can give you an illustration. There are certain people that have delusions, and they have delusions that something is wrong. I think there was a case in Winnipeg a few years ago where the husband and wife went out and prayed for guidance, and they felt they had got divine guidance to kill one or two of the children. They were found to be suffering from mental disease, but they were found under our law to be not guilty on the ground of insanity. If the diseased mind is such that they know it is against the law to kill, but it is the right thing to do—they are commanded by divine guidance or something of that sort to kill—they should be found not guilty on the ground of insanity. I cannot see any other proper interpretation in the light of our Interpretation Act. Therefore, we said what we considered the law to be here now.

Applying the provisions of the Interpretation Act, the word "wrong" must be given a broad meaning. We think it means wrong not only in the legal sense but something that would be condemned in the eyes of mankind. We think that where the defence of insanity is in issue the proper instruction to a jury should be along the following lines: "If you find on a mere preponderance of probability based on the evidence taken as a whole that the accused was labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of foreseeing and measuring the consequences of his act—

That is, the meaning of "appreciation" was to be capable of foreseeing and measuring the consequences of his act,

—or of estimating aright or perceiving the full force of his act, you should find him not guilty on account of insanity; or if on a mere preponderance of probability based on the evidence taken as a whole you come to the conclusion that the accused was labouring under natural imbecility or disease of the mind to such an extent that he was incapable of knowing that the act was wrong (and by that I do not mean merely legally wrong, but wrong in the sense that it was something he ought not to do and for which he would be condemned in the eyes of his fellow men), you should find him not guilty on account of insanity."

Now, I may say that in Ontario direction to the jury has been pretty well allowed, I think, by other judges. I have only heard of one who refused to allow it, and even at the request, I think, of the Crown Attorney, to so charge

the jury. But that is the charge that has been substantially adopted in Ontario.

Mr. Brewin quoted Mr. Justice Mignault as saying that there is no difference between the M'Naghten rules and our courts. In his statement, Mr. Justice Mignault did not discuss the Interpretation Act in detail, but I quote from Lord Devlin, and if you wish a reference to a very fine discussion of this subject it is in *Changing Legal Objectives*, a book published by the University of Toronto Press, and it contains three addresses that were given at the opening of the University Law School, by Lord Devlin, in which he discussed at length the report of our royal commission. He discussed insanity as a defence. Lord Devlin said, on page 83:

May I now return to the points which I mentioned at the beginning? On the first one, I do not think there is really much controversy about whether "know" should mean "appreciate". I entirely agree with the way in which the McRuer Report dealt with that and I can at least say that although we continue to use the word "know" in England I think we should direct the jury in just the same way as a judge would direct a jury over here in the terms of Canadian law.

I hope that we had a little influence on England even without our Interpretation Act. Now, with that outline of what I conceive the Canadian law to be, I will discuss Mr. Brewin's suggested bill. This was considered at great length by the Commission, and not only by the Commission, but we put it to the various witnesses in the course of the enquiry for their observations.

No person shall be convicted of an offence in respect of any act or omission on his part while he was insane.

For the purposes of this section a person is insane if the act or omission is the product of mental disease or defect.

In his submission I think Mr. Brewin put it that there must be a causal connection between the mental disease and the act, and I think that is the only way you can put it. I may say, in our discussion of this, that Dr. Desrochers, who has very wide experience as a psychiatrist, was one of my colleagues, and he was not a man given to many words. When he said anything he was very much to the point, and his comment was this: If you have a disease of the mind, and you have an act, the act is the product of the mind because you cannot act without the mind unless it is an act where it is done as the result of a blackout or something of that sort, which introduces an entirely different concept. The act is the product of the mind; therefore your test is, has he disease of the mind? And with great respect to Mr. Brewin, who can do a magnificent job arguing a case, I think it would be most difficult to charge a jury on what causal connection and analysis of the mind in order to determine causal connection between firing gun and the disease of the mind. If he fires the gun it is a product of the mind. I think that was the view of practically all the witnesses that appeared before us. We got very little support for the New Hampshire rule at that time.

There is this aspect—and we approached it on the basis that capital punishment was not being done away with—that if capital punishment were to stay, you had to have a law that could be administered fairly definitely, but you also had to have hooked in with it the idea of executive clemency, because the emotions, the circumstances all enter into the question of executive clemency and that is precisely the approach that Lord Devlin took in his lecture.

I always found great difficulty at times, even in the ordinary negligence case, where the question of causal connection was raised. But to begin to analyse the mind for causal connection, I think is completely beyond the realm of legal adjudication. It is hard enough in most cases, and it would come to a battle of psychiatrists:—"I think it is a product of the mind." I do not think it is a product of the mind." And then, what is the mind? I have asked psychiatrists that question. I have said, "what is a disease of the mind". Now, the interpretation that the Commission put on our law as it is now has been discussed in a very good judgment in *Rex versus O'Brien* in 1966 Criminal Appeal Cases in the New Brunswick court of appeal. There I think they made a great contribution to the whole discussion. The point that was being discussed was whether epilepsy was a disease of the mind, and there was a conflict of opinion among the doctors, as well there might be. I think most prominent psychiatrists now regard it as not a disease of the mind. Dr. Penfield performed operations for epilepsy and removed certain scar tissue, and then the epileptic would not have any further seizures when it was successful, although it was not always successful.

The New Brunswick Court of Appeal said that if the disease affects the person so that these results follow—that he cannot appreciate the nature and quality of the act that he is doing, or that he does not know it is wrong—then that is so related to the mind that it comes within the interpretation. Now, that is a good judgment and Mr. Justice Ritchie discusses at quite some length the discussions in the royal commission report. Now, when one understands the charge that is put to a jury under our law, there is not a great deal of difference between it and what Dr. Beck was suggesting in submissions to this Committee. They start out by acknowledging that all diseases of the mind ought not to be a defence; that merely by establishing some degree of disease of the mind, one should get off. Our Code puts it "to the extent of". Dr. Beck was introducing "substantial" into the words of the American draft code, and I will deal with that in a moment. But when you come down to the jury that is sitting there and has to make the best of this, they look at it almost in those terms: Could he appreciate the nature and quality of the act? That is, on the evidence taken as a whole, if the accused were labouring under natural imbecility or disease of the mind to such an extent as to render him incapable of foreseeing and measuring the consequences of his act, or estimating a right, or perceiving the full force of his act, you should find him not guilty on the ground of insanity. That, I would say, is in very much more definite language, meaning that there was a substantial impairment of the mind related to the particular act. Dr. Beck said:

Now, you see it is not total incapacity, because even the most serious schizophrenic will not be wholly divorced from reality and you cannot put this thing in terms of black and white, in terms of right and wrong. The test is one of substantial capacity either to appreciate the wrongfulness of his conduct, or to conform his conduct to the requirements of the law. Now, I think if our law is interpreted properly, there is not a great deal of difference.

Now, I want to make reference to some of the outstanding witnesses that we had before us; they fall into several classes and one should really start with them on page 15. Mr. Meredith, Dean of the Faculty of Law of McGill University, who has studied and written on the subject, came to the conclusion that it was preferable to leave section 16 as it is. He said that while in his view leaving the old not covered by the rules as to the royal prerogative of mercy is not a perfect

solution of the problem, he believed that it was safer than to recognize a defence such as irresistible impulse, which might provide criminals with an easy escape from justice. Mr. Meredith's submission was that if the defence of irresistible impulse is to be introduced, it should be proved beyond a reasonable doubt, as is required in the state of Pennsylvania.

It was even accused that my interpretation allowed for irresistible impulse. If it does, I am prepared to accept that, because I charged juries in this way: You do not measure the man's state of mind by the state of mind he was in the day before, or the day after; you measure his state of mind at the time he committed the act, and if his disease of the mind had induced such a condition that he could not foresee and measure the consequence of his act, then he should be found not guilty on account of insanity. It is at the time the act is done, and I think that is what is overlooked a great deal in the administration of our act.

As to the New Hampshire law Mr. Meredith said:

Well, to have no test at all, assuming you are going to retain juries, and I would hope that that would be the last thing we would give up—assuming you are going to retain juries and have no test whatever, the Judge would be in an impossible position. He would not know what to say to a jury in directing them.

Mr. G. A. Martin is not one who is unknown to the criminal law. He is probably the foremost criminal lawyer in Ontario. I have never known him to act for the prosecution; he has certainly acted for the defense. He may have acted for the prosecution sometimes. He said:

With considerable doubt and after a good deal of hesitation, I have come to the conclusion that I would not be in favour of abolishing the present rule for determining criminal responsibility where insanity is alleged as a defence, subject to one or two observations I intend to make later by way of qualification. I hope the qualifications are not sufficiently wide completely to destroy my original statement.

He suggested that "disease of the mind" should be changed to "disorder of the mind", and I am not too sure that that is not a good suggestion: I would say "disorder of the mind caused by disease"; that would meet the case of the epileptic, the arterio-sclerosis and so on. He suggested that it should be changed to "disorder of the mind" because it might be suggested that "disease of the mind" required proof of some pathological change in the brain cells. I must say when you talk about the mind, I do not know what the mind is, and I doubt that anybody else knows what it is. Your mind operates; it is the operation of something in the brain. He discussed the interpretation of the word "wrong" which will be referred to later. He stated that he knew of no case in which an improper verdict had been rendered by reason of the wording of the section. He went on to say:

It seems to me that if the provisions of Section 16 of the Criminal Code are interpreted sufficiently broadly along the lines that Sir James Stephen suggested they should be interpreted, most genuine cases of irresistible impulse would be covered by Section 16. If a person is so overwhelmed by an impulse, or was so disturbed mentally that he could not focus his mind on those things which would govern or guide most people in determining the rightness or wrongness of the act, then he

should be held irresponsible; but I am afraid that again the judicial interpretation placed upon the M'Naghten Rules which, by and large, are followed in Canada, has perhaps gone to such an extent as to exclude that type of thing from the scope of Section 16, although there are undoubtedly judicial opinions to the effect, that while irresistible impulse is not *per se* a defense, it is perhaps very cogent evidence that the accused may not at the time of the doing of the act have appreciated that it was wrong.

Then he said of the word "appreciate" that he thought the word tends to broaden the scope of Section 16.

If he could not appreciate, that is foresee and then measure the consequences of what he was doing in the same way that a sane or normal person might, he might be freed from responsibility under section 16. It would tend to rebut the usual presumption that a man intends the natural consequences of his acts.

He went on to discuss that further but I will not bother you with that. Mr. Robinnet who, along with Mr. Martin, is one of the foremost authorities on criminal law and of the widest experience in its administration, stated:

However, my views as to the substantive law basically are that the rules in M'Naghten's case, as substantially incorporated in the Criminal Code, are basically sound, not as a test of insanity, but as a test of criminal responsibility. I think much of the controversy on this subject has been due to the fact that it has been assumed that the Criminal Code purports to define insanity. It really does not do that at all; it merely purports to define under what circumstances a man shall not be held criminally responsible for his acts. Now with that general observation in mind, it seems to me that it might be worthy of consideration to exclude from the Code entirely the word "insanity", and what is now Section 16 should merely provide that under certain circumstances a person shall not be criminally responsible for his acts or omissions, leaving out any reference to insanity, because I think that that is probably what causes some of the controversy between the medical profession and the legal profession. After all, the Criminal Code is designed to protect the public, and the theory of Section 16 is that it excludes those persons who are not responsive, having regard to their mental condition, to the deterrent features in the criminal law.

Then he went on to say:

My general approach to the whole problem is that, basically, it has worked well, and that subject to clarification of some of these matters that we have discussed, the general principles ought not to be changed.

We discussed the matter of "wrong" with Mr. Robinnet and whether the interpretation of the word "wrong" should be "morally wrong" or "legally wrong".

There is a whole catalogue of legal opinion that it has been working well—not ideally; I do not think that you can get any definition that will be ideal. The American Law Institute's definition is:

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

Mr. RYAN: What was the date of that observation?

Mr. McRUER: It is the American draft code that was referred to by Beck.

Mr. RYAN: Is that before the Durham case, or after?

Mr. McRUER: I am not sure, but I think that was drafted before the Durham case.

Mr. BREWIN: Well, sir I am sorry but it was some time after. It was after the report. The American Law Institute started their studies in 1953 which was before the Durham case—which was in 1954—but they did not have the draft approved until 1962 by the Institute when it was finally adopted.

Mr. McRUER: We dealt with it before 1962, so we must have had a draft.

Mr. BREWIN: I do not see any reference to it in your report, however—

Mr. McRUER: At page 32?

Mr. BREWIN: Of your report?

Mr. McRUER: I am just reading from it.

Mr. BREWIN: It refers to the American Law Institute?

Mr. McRUER: Yes—

The American Law Institute, which has an Advisory Committee composed of thirty-five members drawn from the judiciary and the legal and medical—

—and so on, and we discussed this with Mr. Robinnet and the other witnesses, but it was in draft form at that time. Apparently it followed afterward. Our conclusion on that was:

We therefore conclude that when the provisions of the Interpretation Act are applied to subsection (2) of Section 16 it constitutes the best definition of criminal responsibility that we have been able to find. We think if an accused person has mental capacity to foresee and measure the consequences of the act he committed he should be held criminally responsible, unless by reason of disease of the mind he did not know that the act was morally wrong in the sense that it was something that would be condemned in the eyes of his fellow men.

This problem arises, and I am afraid it will always arise: You depend on the facts of the individual case to a certain extent. All the circumstances surround it and the jury will decide: I think that he ought to be found not guilty on the ground of insanity. Or they go out to their juryroom and the facts are that they do not listen to legal niceties in interpretation. I have had many cases—dreadfully distressing cases—where insanity has been a defence. But you do have the class of case where, on any practical legal definition of insanity—any that would not leave large loopholes for the person who could get the highest paid psychiatrist and leave it as a debate—there will still be those who will be convicted who a psychiatrist would say had mental disease, but they are psychopathic characters.

There is one thing that I can emphasize: you cannot make the courtroom clinic. You have to apply facts and law, and you cannot make it a clinic when

you diagnose this and diagnose that. You have to have a place where the clinic comes in and this is where I am coming to another aspect of my life, when I was on the Penal Commission in 1937. We visited all the penitentiaries. I have spent much more time in penitentiaries than any of the people here. I spent two years off and on in the penitentiaries; we stayed there as long as six weeks, interviewing every inmate that wanted to come and see us. We spent perhaps six weeks in one institution. Obviously there are these people who are unbalanced. The doctors could not commit them to an institution. They could not make out a defence of insanity on any reasonable criterion but they obviously ought to be treated apart from the normal prisoners—if there are any normal ones and one sometimes wonders if there are any. It is a very great and difficult task, but the emphasis certainly should be on treatment after they have been committed to prison where there is any suggestion of mental disorder of any kind.

I have asked psychiatrists, "What is a psychopath?" They have said frankly: "We do not know. We call them psychopaths". Others will attempt to define it. My recommendation to the Committee is that it would not be wise to introduce into the criminal law of this nation the terms of Mr. Brewin's bill. If capital punishment is really done away with—and it seems to be done away with by Order in Council now anyway, and I am not entering into any debate on that—the present terms of the Criminal Code with regard to capital murder would make this most extraordinarily difficult to charge a jury. The capacity to plan ahead for capital murder would be one test. Would the making of all these plans be the product of a diseased mind?

It is difficult as it is now, and I am a little in sympathy with what Lord Hoddard said to me after he introduced a similar bill in England and had some experience with it, that they should have abolished it altogether instead of passing this legislation. It is so difficult to administer, to plan and deliberate in so many things, and then when you get into the commission of robbery you have a man convicted of capital murder and he did not intend to murder at all. Such as a case that I presided over. They were robbing a storekeeper with a very bad arthritic condition in his neck and they tied him up, not intending to do him any harm at all but only to keep him quiet while they robbed the store and went away. If they had succeeded in that, they would have only been guilty of robbery, but unfortunately his neck broke and he died. That makes it capital murder. The jury took a different view, and I think I helped them out a little bit, but you could not have set aside a verdict of murder. The men were very drunk at the time so the jury let them off with manslaughter on account of drunkenness.

Now, to come to Mr. Munro's bill.

Mr. RYAN: Could we not have a question on this at this time?

The CHAIRMAN: Mr. Munro is here and it is now twelve o'clock. If Mr. Rueter could make his comments on his bill, then we could have the questioning of the two bills at one time. The Committee might decide. It was just my thought.

Mr. RYAN: Looking at Mr. Munro's bill, there is quite a lot of writing.

Mr. McRUER: I think I can deal with Mr. Munro's bill fairly shortly. I have a great deal of sympathy for Mr. Munro's bill and I think his idea is right but, with

great respect I think we could work out a better procedure. There is no definition of insanity there, either, and it is a very perplexing thing to find out what the charge to the jury should be on that. Leaving that all aside, if a man is thought to be unfit to stand trial on the grounds of insanity or, we will say, there is doubt as to his fitness to stand trial, then you must direct initial and, if he is found unfit to stand trial, even though there may be no case to make against him at all, yet he goes to an institution and that hangs over him. He may be in an institution for five years and then he comes out. Is he to be tried? Insanity as a defence really will be almost a nominal thing.

There will be the rare case like the one Mr. Brewin had of the boy who was setting fire to things. There is the kleptomaniac, but nobody wants to raise the defence of insanity that may result in their client being locked up in an insane asylum if they think they may get away with a year or two in prison. It is seldom raised in anything but a capital case but Mr. Munro has seized on something that I think is very important. My suggestion of the approach would be this—and I would be prepared to go a little further than Mr. Munro's bill goes—that where there is reason to doubt that a man is fit to stand trial, an application be made to the court to appoint a guardian *ad litem* to appear before him and instruct counsel and carry on the defence as far as counsel wishes to carry it on. At some point during the case, if he wishes it, he may have the issue determined. Mr. Munro's bill leaves me in this difficulty: Where is counsel getting his instructions or his authority even to enter a plea if the man is unfit to stand trial?

I had this happen once. I was about to try a murder case and counsel came in and said: "Our case is going to be insanity. There is no question that he did the act but he has only the mentality of a six-year old," or something like that. My reply was that there had to be an issue as to his fitness to stand trial. "Oh, no there is no question about that. The psychiatrists all say he is fit to stand trial." I asked, "When did he recover, if he is an imbecile?" The answer was, "We never thought of that". I told him that we would have to have a trial as to his fitness to stand trial, and we did. He was found not fit to stand trial, but there was no question about his having done the act.

But there might be a question of an alibi, for instance, or they may not have proper proof of the identity. All those sorts of things arise, and I think a solution should be found along Mr. Munro's lines, but I think we should follow some procedure similar to the way you do in a civil case where you have a guardian appointed to conduct the case on behalf of the person of unsound mind. Then he can enter a plea of not guilty which should allow the court to explore and cross-examine witnesses—the best instructions they can get—and then he should be able to ask to have the issue tried. He may be acquitted, or he may be found to proceed to have an issue of insanity decided by the jury as a defence; all those things arise. I may say I am quite in sympathy with the spirit of Mr. Munro's bill and the principle of it, but I would like to see some more thought given to the procedure, that is all.

The CHAIRMAN: Then, gentlemen, we are open for the period of questioning. We always ask our witness if they do not mind, if we have questions, Mr. McRuer. I see Mr. Pugh has a question and Mr. Ryan.

Mr. PUGH: I go back to the Durham case. I do not know the ins and outs of it but I remember the date was 1954. Since then there should be some consideration

body of law based on what Mr. Brewin is suggesting we should put into our act. You are insane or you are not. You stand trial or you do not. Do you know about that body of law in the United States and, if you do, what difference do you find between the evidence which has been put forward—this is what you say the jury has to decide on—in the Durham case, or the law in the States as it is now, and your commission, and going even farther, despite Mr. Brewin back to the old TNaghten case?

Mr. McRUER: I think that that would be an extremely difficult question to answer because, to begin with, the Durham rule has been adopted only in two or three places in the United States since it was promulgated. To go to a jurisdiction and say that this would be better transplanted into our jurisdiction is an awfully difficult thing. You may get the opinion of one lawyer that it is, all wrong. I heard that within a year Durham was out on the streets. I do not know whether that is right or not. Some American lawyer or judge told me that. I can speak with a good deal of authority about how our own law works, but I do not know how the law of any other country works.

Mr. PUGH: My reason for asking that was the apparent date of the draft and the conclusion of the American Law Institute, on Article 4, on page 32, on responsibility which follows this. Is the American Law Institute similar to the commission which you headed?

Mr. McRUER: Oh, no. The American Law Institute is an academic body. It is composed of—

Mr. PUGH: I did not mean the composition, sir. I meant the conclusions which they arrived at, apparently in 1965, as a result of the draft.

Mr. McRUER: I do not think that in practical administration there would be a lot of difference between this idea of their substantial capacity either to appreciate the criminality of his conduct, or to conform to his conduct and the requirements of law. I think our definition is a better one, having regards to the interests of the accused.

Mr. PUGH: On that same point—

Mr. McRUER: But I do not think there is an awful lot of difference once you get the jurymen in the box. They do not remember very much what the judge said to them when they go to the jury room.

Mr. PUGH: Your conclusions go more to the very, very difficult position of a judge charging the jury rather than a change in the actual laws that we have. In other words, the law as it stands in your mind, is probably quite correct but it is the charge to the jury which must be very, very finely delineated.

Mr. McRUER: Well, all laws have to be administered and I think a law that is capable of good administration is the most desirable law. When looked at from an academic point of view you may say there are reasons it does not cover this and it does not cover that, but when you get into how, it is administered—that is the point Lord Devlin was making in this lecture, too, that in England they administer this. You get into the court room and get a conflict of cross-examination, and you find things. We have a body of law here that has been subject to those tests, and I may say you will find in our reports that the Canadian Association of Psychiatrists said: "Do not change it". Now there are individual psychiatrists who are quite—

Mr. PUGH: Does this administration you mentioned actually cover the difficult task of the judge charging the jury?

Mr. McRUER: Yes, and the task of the jury understanding what he is saying. A judge can always laboriously write it out. As one judge said: "When I am charging a jury I am charging the court of appeal." It is not whether the juror understands what he is saying or not, but whether he has it all written down in such form that the court of appeal cannot catch him up.

Mr. PUGH: That was my next point, sir, thank you.

The CHAIRMAN: I now recognize Mr. Ryan. I suggest that as we have Mr. Brewin and Mr. Munro here, who each sponsored one of these bills, it would be a courtesy to these distinguished gentlemen to allow them a few minutes to make their observations and then we will go on with the general questioning? Agreed?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Ryan?

Mr. RYAN: I will stay with the first bill, then—Mr. Brewin's bill—for now. I would like to ask you, sir, if this bill sought to amend Section 16 of the Code by replacing the word "diseased" with the words "disorder of mind caused by disease", would you be wholeheartedly in favour of it?

Mr. McRUER: Yes, I think I would go along with that.

Mr. RYAN: This is Mr. Martin's idea plus your own?

Mr. McRUER: Yes, because to me there was always a difficulty when you talk about the mind being diseased or a disorder of the mind caused by disease. Now that may be, as I say, arteriosclerosis or it may be epilepsy. It does not enter the fine distinction of whether it is a bodily disease or a so-called disease of the mind.

Mr. RYAN: I take it that your only other concern in that area is the word "mind". I believe you said, possibly inadvertently, that the mind is inside the brain. Are you convinced that that is the case?

Mr. McRUER: I do not know what the mind is.

Mr. RYAN: The mind could include the metabolism or chemicals in the body.

Mr. McRUER: I do not know. I do not know what goes to make up the mind. When I forget things I often wonder where the mind has gone.

Mr. RYAN: During your long and distinguished experience in the courts would there any cases where you felt that the metabolism of an individual did affect the mind?

Mr. McRUER: Never.

Mr. RYAN: Or was part of his mind?

Mr. McRUER: No, I think it always is dealt with more as the result of how it acts rather than exactly what caused it.

Mr. RYAN: I see. The reflexes would not enter the picture or anything like that?

Mr. McRUER: Well, it is just the behaviour. Let us take this case that happened near Windsor just recently. Someone from the Attorney General

department discussed with me informally, over a luncheon table this question of the interpretation of appreciation and so on. They made it work there, all right. obviously that poor fellow just shot people without the slightest reason for it. Well you cannot get in to know what caused that to happen or go into all the circumstances to come to your conclusion as a jury.

Mr. RYAN: Do you think it would be better to put a much simpler question to the jury? For example, was the accused unbalanced mentally at the time he committed the act?

Mr. MCRUER: That would almost let everybody who wanted to put it up, because you will probably find some members of Parliament that you would say are unbalanced mentally.

Mr. RYAN: You do feel that the present law is—

Mr. MCRUER: I was just wondering about some judges.

Mr. RYAN: Well, thank you very much.

Mr. HONEY: Mr. Chairman, may I ask one supplementary question? Following Mr. Ryan's first question, sir, would you still prefer Section 16 in the present form to Mr. Brewin's suggested amendment as amended by Mr. Ryan?

Mr. MCRUER: I would certainly not want Mr. Brewin's suggested amendment in at all, because I think it would cause us untold trouble in administering it.

Mr. HONEY: What is causing me trouble, sir, is that Mr. Ryan added certain words to Mr. Brewin's amendment following your presentation, which I think you indicated you could accept.

Mr. MCRUER: No, I do not think that is quite it, not, Mr. Brewin's "the product of a mental disease or defect", if, for the purposes of this section, the person is insane if the act or omission is the product of mental disease or effect. Now, what I was saying was that as far as our section as it is now is concerned, I would take that definition if it were the product of disease as the New Brunswick Court of Appeal did. They just interpreted it that way. "A physical disease that operated on the mind that he could not appreciate the nature and quality of the act or know that it was wrong." I was going along with that. But not with his as a definition to interpret.

Mr. HONEY: I do interpret you are applying the amendment to Section 16 as now stands?

Mr. MCRUER: Quite right.

Mr. HONEY: Thank you, sir.

Mr. BREWIN: Mr. Chairman, I face a very great authority—

Mr. MCRUER: I would like to be cross-examined by you.

Mr. BREWIN: I do not think I will cross-examine you; I think I will just reply to you, if you do not mind.

Mr. MCRUER: I would rather cross-examine you.

Mr. BREWIN: Well, we would both enjoy it, I am sure. Perhaps it would be a little shorter if I just state my own point of view on this matter. Despite the authority of Mr. McRuer, I am quite unrepentant about producing this bill which I

think is a very great improvement over the M'Naghten Rule and I want to say a word later about the distinction that Mr. McRuer makes between the M'Naghten Rule and Section 16. I think the Durham Rule which is incorporated in my bill is a very great improvement. I think it is simpler and allows a proper question instead of an improper question to be put before the jury. But I would remind the Committee that when he gave evidence here before when I presented my bill, I stated then, and I repeat, that I believe a better statement of the law is that which was produced by the American Law Institute and adopted by the Circuit Court of Appeals in the *United States vs. Freeman*, copies of which I made available. I find the reasoning there very satisfactory and very strong both in its criticism of the M'Naghten Rule and its review of the whole situation. Its criticisms included quotations from eminent justices, such as Mr. Justice Cardozo and Mr. Justice Frankfurter. The English—

Mr. McRuer: They did not read our report, though?

Mr. Brewin: No, I do not suppose they did. I presume the English Royal Commission on Capital Punishment that dealt with it probably did read your report, and the majority came to a different view and agreed with a minority report of the 1953 commission of which Mr. McRuer was the Chairman. However, I do want to emphasize that my present view, which I would like to put before the Committee, is that I suggest the definition in the American restatement adopted by the courts there has much greater clarity and does not lend itself to an application of the M'Naghten Rule. I will just read it and I think it is quite different from what is in the present code.

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct—

So far this is very close to the code,

—or to conform his conduct to the requirements of the law.

That definition was based upon this report which was started, apparently, in 1953. There were nine years during which, according to the judgment in the circuit courts of appeals, the leading legal and medical minds of the country applied themselves to the task of an adequate definition. Before its final re-draft it was submitted to and revised by an advisory committee comprised of distinguished judges, lawyers, psychiatrists and penologists. After committee approval was obtained, successive drafts were considered by the full membership of the institute. Nine long years of research, exploration and consideration culminated in the definitive version which was finally adopted, little different from the original proposal. This is dealt with by the court in its judgment which this Committee has.

This judgment and a final version of the report were not available to the committee in 1953. I must say, with very great respect, that I think what the former Chief Justice has mentioned to us has shown the weakness of the present rule, because he himself said: "by means of a process of interpretation". By bringing in the Interpretation Act and by giving a special and rather refined meaning to the word "appreciate" we can make the present code appear to mean roughly the same as this present re-statement, which is that there is no substantial difference. But I think he said—if I did not misunderstand him—that man-

judges in interpreting the present code have presented it in a form indistinguishable from the M'Naghten Rule.

Mr. McRUER: I did not say that, Mr. Brewin.

Mr. BREWIN: You did not? Well I certainly misunderstood you.

Mr. McRUER: No; at least if I did I did not intend to. I said that as far as Ontario is concerned, my view was that all the trial judges in the Supreme Court except one were interpreting as we set it out in the report. I do not want to be misunderstood.

Mr. BREWIN: I thought you said, and perhaps I am wrong, that the Code was interpreted by some judges—I thought you said “habitually”—as if it were the same as the M'Naghten Rule. Certainly there are some illustrations of this.

Mr. McRUER: It may have been at times, but I am speaking of the period since our report. I did not want to leave that impression. If I did I certainly did not want to. I may change my evidence. Dr. Rabinowitch was permitted that: he changed from “the mouth” to “the stomach”.

Mr. BREWIN: If I misunderstood you, I am sorry, but I still want to make the point that in my view, at least, the sort of keen, legal refinement that is brought into the report which creates a distinction between the word “appreciate” and the word “know”—which requires, I would suggest, a fair refinement—is not as satisfactory, if it is substantially the same, as the test which the American Law Institute came up with.

Mr. McRUER: Has the American Law Institute's test been adopted by any other court in the United States? Do we know what the views of the local people are?

Mr. BREWIN: I think it has been adopted by a fair number of courts, but the court which did adopt it fairly recently in a very full and reasoned position was the United States Court of Appeals Second Circuit which, I think, is the court which sits in New York and other states. I believe it has been adopted by a number of other state courts, but I think this decision, which was only decided in 1966, is the main current of authority and, as I read it, is a rather authoritative decision, although it has not gone to the Supreme Court of the United States.

All I can say is that I think some of the criticisms that the Chief Justice has made at the Durham rule have force, although the proposal there was very similar to that proposed by the royal commission in England on capital punishment which came up with the proposal that the M'Naghten rule should be derogated and the jury should be left to determine whether, at the time of the act, the accused was suffering from disease of the mind or mental deficiency to such a degree that he ought not to be held responsible. That was still another test recommended by a royal commission—Gower's commission, I think it was called—in England after a similar study of this problem.

Mr. McRUER: Has that been adopted in England?

Mr. BREWIN: I do not think it has been. I do not know. There have been some changes in the law there. However, the summary that I would like to make is that, quite frankly, I think the American test is one which is complete in clarity. I think the deficiencies of the M'Naghten rule are clear and acknowledged. I do not want to repeat them, but I think that our code—even though by

definition one can refine away some difference between it and the M'Naghten code—leads to the application of the deficient test of the M'Naghten rule which has been widely criticized as being out-of-date, and I think it would be far better to get down to a definition such as the American law re-statement which is, in my mind at any rate, much clearer and does not require reference to the Interpretation Act or refinements of language to the same extent that applying the present section 16 of the Criminal Code requires in order to achieve the result I think we are all aiming at, and that is not to have people like my constituent Mr. Markle convicted of a criminal offence when, quite obviously, he understood and knew the nature of his act and he surrendered and asked for treatment as the result of the act; but when he, quite obviously, was not capable of controlling his action and was acting purely under the influence of a mental condition rather than a criminal intent.

Mr. McRUER: I have only one comment. I think Mr. Brewin speaks as if we are stretching a point in applying the Interpretation Act to the Criminal Code. The Interpretation Act is part of the law of Canada, and it must apply to all sections of the Criminal Code, not only this one, and it is not a question of fine distinctions or anything like that; it is examining what the Act says and how the Interpretation Act applies to it. That is something that I think was overlooked for a long time, until our commission sat but which has now been pretty well accepted. You cannot get away from applying the Interpretation Act.

The CHAIRMAN: I think Mr. Pugh has a question.

Mr. PUGH: It seems to me that Mr. Brewin favours the American Law Institute statement or draft, and he now asks in appearing before us to have the criminal code amended under Section 16. My question is this, and it concerns the interpretation: Would using the interpretation put forward by the American Law Institute not work under our present Section 16? In other words, it is a matter of interpretation, or setting out. Why change the wording as you suggested in your bill?

Mr. BREWIN: That is where I think I differ from Mr. McRuer. I do not think our present bill does incorporate the American law re-statement. I think you need a definition in the code, and I do not think you need it by a process of interpretation. We need a clear-cut statement.

Mr. PUGH: But in our courts today in charging juries are we not using more or less what I will term the McRuer commission definition or statement? I fail to see the difference between that one and the American Law Institute and bringing it farther over, why is it necessary then to reword Section 16?

Mr. BREWIN: If some of the judges fully accept what Mr. McRuer said—and I know if he were the court he would do it—and read into the present code what I would call the interpretation which is contained in the American re-statement, then I think it would be better to make it clear in the code that that is the proper interpretation and state it if that is the answer, because it is my frank impression that many courts would not read the present Section 16, or many juries interpret Section 16 if it were put before them, in the same way as they would interpret the reasoning of the law in terms of the American re-statement. Under the present laws I think they would tend to go back to the traditional approach, which is the M'Naghten rule. If I were satisfied that the process of interpretation

proposed in the McRuer commission was adequate to abolish or get rid of the M'Naghten rule by reason of the use of the word "appreciate" and the application of the Interpretation Act, then I would agree that there is no need for a re-statement. I just feel, however, that the re-statement is a lot clearer, and certainly a great many people—perhaps I am one of them—have seen the present statement of the court as being substantially the M'Naghten rule, and it is the M'Naghten rule introduced in this amendment that I want to strike at because I think it is out-of-date and inadequate.

Mr. PUGH: We have made a fair amount of the administration of the Act, and that was my reason for bringing up this series of questions. I will look forward to your demonstration in the House of Commons when you bring this matter up.

Mr. BREWIN: It was referred to this Committee. You are the ones who have the responsibility now.

Mr. MCRUER: Mr. Brewin, in your inquiries have you found any cases, other than the case of your client, where they felt that there was a jury properly charged and where there has been a conviction, or they ought to have been—

Mr. BREWIN: No, I have not personally. My own personal experience is limited, but I have spoken to Mr. Martin, for example. You mentioned him and perhaps it would be fair for me to say—and perhaps the Committee would like to call Mr. Martin—that although he expressed a view which you referred to before 1953, he is now of the opinion that the law would be improved by a re-statement on the lines of the American re-statement. And he said to me—I think quite modestly, although perhaps it does not sound modest—that in his mind as a thoroughly experienced counsel and, although he did not mention it, before courts as well informed and concerned with this matter and as you would be, for example, there is no problem; that he has been able to get the law applied, he thinks, in a satisfactory way under the present code. But at the same time I may say that he said to me that his present view, as I understand it, was that in the ordinary administration of justice with nothing but the code to guide them as a whole and, perhaps, some cases cited, with counsel who did not have the same refinement of ability and experience that Mr. Martin has in this matter, he thought it would be better to have a re-statement. Now, I may be misrepresenting what he said, but while I do not say he gave me any cases where this had happened he suggested to me that he thought it had happened.

Mr. MCRUER: I have not heard of any. I have certainly known of some cases, and at least one particularly, where the doctors all said after the man got off that there was really nothing wrong with him at all. It was all blown up in the courtroom, but those things will happen, no doubt.

Mr. MUNRO: You mentioned that you agreed generally with this private bill concerning fitness to stand trial except for the qualification concerning procedure. You mentioned the guardian *ad litem*. That is the first time that this suggestion has been made, and it is an interesting one.

Mr. MCRUER: I often thought about it but never made it.

Mr. MUNRO: If a guardian *ad litem* were appointed as a procedural improvement to this bill, would you do away with this type of limitation to the bill where the judge or magistrate could commit the Crown's case?

Mr. McRuer: Yes.

Mr. MUNRO: Then really what is anticipated here is that as part of the Crown's case the Court would also have the discretion to allow witnesses to be called as to identification and alibi.

Mr. McRuer: Yes, one thing impressed me very much, Mr. Munro, and that is that there might be perfectly good evidence of an alibi which you cannot put in until the defence—very convincing evidence of an alibi which shows that they have got the wrong man and that they have just fastened on to him. There should be some way of getting that out.

Mr. MUNRO: Well, my private bill provides it.

Provided that the court judge or magistrate may, at the request of counsel for the accused, and in his discretion deems it to be in the interest of the accused, call any witness on the issue of identification of the accused as the party responsible for the crime, and on the issue of whether the accused could have been present at the scene of the crime at the time of the commission.

Mr. McRuer: I think the whole procedure is awfully complicated big the court calling evidence. I am entirely against any procedure by which a judge calls witnesses. He brings them into the case, he has to find out why he is calling the witnesses, and then he calls the witnesses who come before the jury as witnesses called by the judge. They are all bewildered by it, but I certainly am in sympathy with your objective if we could work out a simpler procedure.

Mr. MUNRO: Would the judge serve any discussion as to whether a guardian *ad litem* could be appointed?

Mr. McRuer: You would have to make an application. You would have to provide for a procedure for making an application. You might do it as a preliminary to the trial by putting in one or two psychiatrists and saying, "I have doubts whether this man is fit to stand trial and I am making an application for the appointment of a guardian *ad litem*. His father is here and he is willing to act and to instruct me as counsel". Then you are away in full possession of everything. It seems to me that under this bill you are just getting half-way there.

Mr. MUNRO: Assuming that the application was granted, of course then there would be no limitation; the crown's case would go in and the defense would be allowed to put in a full defence without, for instance, any type of proposed qualification of alibi or identification—

Mr. McRuer: Subject to discussion, I do not see why there should not be some means by which a man who is insane should not be able to have his case tried under proper direction from a guardian who has been appointed by the court. Others may disagree with me entirely, but I think your general objective is a very good one.

Mr. MUNRO: I was going to ask what your views would be on including, another possible defence, self defence but, of course, this suggestion would have a full defence in any event.

Mr. McRuer: Yes, self-defence and provocation could arise, and the other witnesses would see the provocation, and so on. Self-defense—that he was being

attacked—might be a complete answer to be found not guilty. Then, after that, the civil authorities take over in deciding what treatment he should have.

Mr. MUNRO: Thank you.

Mr. AIKEN: The first question I wanted to pursue has been dealt with, I believe, Mr. Chairman, and that concerns the procedure of appointing a guardian *ad litem*. This is no problem in civil matters; I was trying to think whether there is any similar procedure in a criminal case.

Mr. McRUER: No there is not, but that is no reason why we should not start it.

Mr. AIKEN: This would be, in effect, appointment of counsel, somewhat in the same way as counsel are now appointed by the court, for various reasons.

Mr. McRUER: Mr. Aiken, I would rather envisage that it would not be counsel that would be appointed as guardian—not counsel to instruct themselves. Another solicitor, or a solicitor for the family, or someone like that might be appointed, the same way as you do with a civil case, but I think a judge would exercise a certain amount of discretion as to what sort of person you appoint as a guardian. It might be somebody who would act as the official guardian does now in proper cases, or a public trustee. It would probably be better not to have an official, but that it would be somebody appointed who would be in sympathy with the family.

Mr. AIKEN: I was referring to the procedure. Would this be done right at the time of trial, or would a preliminary order have to be made, perhaps when the man is first brought before the court, and then something in the nature of an order in the civil action which would appoint a guardian *ad litem*, adjourning to proceed with the trial, perhaps at the next session?

Mr. McRUER: I think you would have to have permission that it could be done at any time, Mr. Aiken, because the circumstance might arise where, at a preliminary hearing, the man would be quite all right. In the meantime, after he has been committed for trial, he has become mentally deranged; that quite often happens. It might be during the course of the trial, because the present provisions, at any time during the trial the judge has reason to doubt that he is fit to stand trial. I think that should continue.

Mr. AIKEN: Then, just to follow up the idea, which I think is an excellent one, would the appointment of a guardian *ad litem* permit the trial to proceed in all cases where the mental ability of the accused to stand trial was questioned? In other words, would this then get around the difficulty of merely saying the man is unable to stand trial because he cannot instruct counsel, and permit every case to proceed at the option, of course, of defence counsel on all other grounds except insanity?

Mr. McRUER: I would think so: that is my own view. He should be able to put forward any defences and go right through, but defence counsel should be in the position that he is not compelled to go through with it, because he might arrive at a stage where he would say: "I am in an impossible position in this case. This man cannot give me instructions and I must have an issue tried now as to whether he is fit to stand trial and whether we should proceed with the case."

Now, you raise a very important point that is not well covered under our present law at all and that is his fitness when he is first arrested, and so on, but that is all wrapped up together. It might be that thought should be given to an application to a judge of the High Court—I think it would have to be a judge of the High Court—who would appoint a guardian *ad litem*, so to speak. It would not be the magistrate or someone like that. There would have to be a proper application.

Mr. AIKEN: One final question, so that I will be clear on it. This would really permit an accused person, about whose mental condition there is some doubt, or his counsel to proceed with the trial until the point where he sees he might be convicted, or at least the likelihood is that he would be convicted except on the grounds of insanity. At that point, then, he would have the alternative of asking for trial for an issue of mental—

Mr. McRUER: I think if there were justification for making the first order, he should have that. You start with the assumption that the first order was correct: then he goes along, and the case has gone against him, and he decides that he will have the issue tried. I would be generous enough to go along with that.

Mr. AIKEN: This would answer, in fact, Mr. Munro's basic problem of a person who has never had the opportunity of hearing the evidence against him in full and meeting it.

Mr. McRUER: That, I think should be cured. I think, Mr. Munro, that the present situation is wrong.

Mr. AIKEN: Thank you.

Mr. MUNRO: Especially in view of the incidence now of mental retardation. Mr. Chairman, who said that about a million Canadians are in this category?

Mr. McRUER: There are all degrees of retardation. You mentioned it Mr. Munro, I think, when you introduced the matter; that there are things other than insanity. I was always puzzled in this situation about what to charge the jury, because probably 40 per cent of the people that are tried really do not know what is going on in the court room; that is, to follow the proceedings, and instruct counsel and understand the force of the evidence being given.

You do have cases where you cannot communicate with a person. I tried a case in Cochrane where a witness was a deaf and dumb little girl. She had been ravished by a man who got her into a truck and took her away. She had had some instruction in what they call the sign language at Cobourg. The teacher was there to try to interpret for her, but she would not talk to the teacher because he was the disciplinarian and she was afraid that he would discipline her for being out with this man. She was so intimidated that she would not talk to him at all. Her mother had a way by which they could understand one another; there was a means of communication. We used that to get her evidence. There was evidence other than her own evidence, but suppose that she had been an accused person? Suppose that she had stolen, or she had stabbed somebody, or something like that. There is no question of insanity at all; it is a question of being fit to stand trial. I do not like this phrase in the code, "by reason of insanity", because there are other ways in which they are not fit to stand trial.

The CHAIRMAN: Mr. Ryan, do you have another question? We there any other questions?

Mr. RYAN: Would you limit the appointment of your guardian ad litem to cases of indictable offenses only, or would you have such an appointment made for any offenses under the Criminal Code?

Mr. McRUER: If you get into the minor offenses, it is like using a sledgehammer to kill a fly. I would start with the indictable offenses first, because the prosecution of such trivial offenses would be withdrawn.

Mr. RYAN: From your experience, could you give the Committee any idea of how long a period does pass on the average when it is impossible to hold a deferred trial, due to loss of witnesses, or inability to locate them.

Mr. McRUER: Someone from the attorney general's department could give you very much more reliable evidence than that, but I know that there have been some very unsatisfactory cases where a person has been held for five years and then they would be returned, but the witnesses are gone, and so on. I did have one case—a very sad case—where a woman came back after about two years, but there was no difficulty proving the case on the evidence of what she had done, and so on, and she was found insane at the time and committed. I understand she is out now, living a fairly normal life.

Mr. RYAN: Thank you.

Mr. McQUAID: Mr. Chairman, I am wondering if perhaps Mr. McRuer would know whether, following the publication of his report, any uniformity by judges across Canada has developed with respect to the charges of juries?

Mr. McRUER: I do not know a thing about the situation outside of Ontario, but I know that the judges of the Supreme Court—and, after all, the Supreme Court Judges deal with this; it is seldom, if ever, raised in the lower courts—agreed pretty well among themselves that that is the instruction we will give to the jury. I think I heard of one exception where the judge refused to give that instruction.

Mr. McQUAID: So there is the danger that in other provinces the M'Naghten rule may still be used.

Mr. McRUER: I do not know what is going on in other provinces at all.

The CHAIRMAN: Do you have another question? Mr. Honey has a question, if Mr. McQuaid is through.

Mr. McQUAID: Yes, I am through.

Mr. HONEY: Thank you, Mr. Chairman, I just have one question. This is with reference to Mr. Brewin's bill, sir. Do I understand correctly from your evidence that you have some concern with respect to the suggested wording of Mr. Brewin's bill where it refers to the act as a product of mental disease or defect; that there may be cases where a psychiatrist is unable to say that there is mental disease or defect present, but that the man is, in fact, a psychopathic case; and that it would be a miscarriage of justice if there were a conviction because of the inability of the psychiatrist to give evidence for the finding that would be required under the proposed amendment in Mr. Brewin's bill?

Mr. McRUER: My point is that I find it very difficult to have a jury decide what is the product of a mental disease. The act certainly is the product of the mind, but how do you analyze the mind, and departmentalize it, and say: That act was the product of a mental disease, and that one was not. That was the difficulty with Dr. Durocher, and I found it insurmountable. I think that what they do with this is just say: Well, there is the law; do you think he should be found not guilty on the ground of insanity? But then you get into the battle of psychiatrists, you get into analyzing and departmentalizing the mind; they can have a lot of battles even under the M'Naghten rules in their most strict sense.

Mr. HONEY: You made some reference to the fact that you had an observation once from a psychiatrist to the effect that when they could not find anything definitely wrong with a man they said he was a psychopath. Have you in your experience, had occasion to try an accused where the psychiatrists were unable to say he had a mental disease or defect, but in your opinion—having observed the man and listened to all the evidence—he was a psychopathic case where it would be improper to convict?

Mr. McRUER: I do not recollect any case where he was convicted where that would arise. Psychiatrists frequently would have quite a difference of opinion of whether he had a mental disease at all; but then they were talking about what a mental disease is which proved a most difficult situation. But, as a rule, if he shows extreme psychopathic tendencies—whatever that might make of it; we know what you mean by it anyway—the jury would find him not guilty on the ground of insanity. With the operation of the mind, and speaking of mental disease, you are in a great area of uncertainty that cannot be resolved by let us say, psychiatrists. They give conflicting opinions, and it is difficult to resolve by the jury, so no matter what you do you are going to have to try and get along the best you can. In many cases of capital punishment, in the old days—and I practised when capital punishment was capital punishment—there were not many cases where they did not hang if they got sentenced, and there were great scrambles for the defence of insanity, much more so than there is now.

Mr. HONEY: Thank you, sir.

The CHAIRMAN: Mr. Pugh, you have one more question, and then Mr. Munro.

Mr. PUGH: With regard to insanity as a defence and the question of not being able to stand trial because of insanity, I take it that there is quite a different thing there, and I am going back to, making the court into a clinic—to use your words—that it is the state of mind at the time of commission and not at the time of trial.

Mr. McRUER: That depends on what you are deciding. It may very well be that no case can be made out for a defence of insanity at the time he committed the offence, but there is a real case that he is unfit to stand trial.

Mr. PUGH: Now, suppose we have insanity at the time of commission of the offence, is the suggestion that has been made that a guardian should be appointed *ad litem* to further the course of the trial so that the trial will be heard at that time?

Mr. McRUER: So that they can proceed with the trial notwithstanding the fact that he is unfit to instruct counsel. There should be some method by which they can determine his guilt—that he did the act.

Mr. PUGH: Well, not knowing the law, if a man is found unfit to stand trial he is incarcerated at Her Majesty's pleasure, and after two, three or four years, he comes out; does he then have to stand trial again?

Mr. McRUER: Yes, he is sent back to the court for trial. There have been some difficult ones, and the crown attorney at Toronto can tell you of some really extraordinary cases where a person may come back several years later. Well, what can we do? All the witnesses are gone.

Mr. PUGH: Then, just to button this up, Mr. Munro's bill really does not cover the cases where a man is unfit to stand his trial, but rather the case where a man is insane at the time of commission.

Mr. McRUER: No, I think he is covering them both.

Mr. PUGH: If he felt that he had insanity at the time of commission of the act, and he could prove it handsomely, should a good defence counsel not then proceed with his case and get the whole matter cleared up?

Mr. McRUER: Well, Mr. Munro's idea is that he should have the opportunity of doing it, at any rate. He might not want to, because he might say: "Well, I just cannot conduct the defence because we cannot communicate with this man intelligently and we will have to have him declared unfit to stand trial now. Mr. Munro wants the alternative that he could go on and help determine that he is not guilty."

Mr. PUGH: Would it not be a hardship on the courts to allow that because of the two chances?

Mr. McRUER: I do not think so; I would not be afraid of it.

Mr. MUNRO: I would like your comments on the way insanity is being interpreted at present. In most cases I generally come back to what sounds like part of a preoccupation with mental retardation. I would say that most of the mental retarded cases I know would fall under the present interpretation of insanity.

Mr. McRUER: Oh, yes, there is no question of that. The one I mentioned that had tried in Guelph was just that.

Mr. MUNRO: Although your suggestion about doing away with this qualification, "unfitness to stand trial on account of insanity", is an interesting one.

Mr. McRUER: Well, I think that there ought to be a re-definition of something of the meaning of insanity in that; there is none there. In section 16 it is defined, but there you get no definition. In common law it has been interpreted, and there is a case where someone spoke a strange language and there was no interpreter, no one available who knew the language—it was some Asian language—and they had to find him unfit to stand trial because they could not communicate with him.

Mr. MUNRO: They should have elected him to the House of Commons.

The CHAIRMAN: Mr. Cantin, do you have any question at all?

Mr. CANTIN: No, sir, thank you very much.

The CHAIRMAN: We thank you very much, Mr. McRuer. It has been a long session, you have been very generous with your time, and you have certainly given us the benefit of your long experience. Thank you very, very much indeed.

I remind the Committee that on Thursday we will be meeting the officials of the Canadian Labour Congress who have asked to appear before us to express their views regarding the subject of safety devices on motor vehicles, particularly regarding the inspection of the vehicles themselves before they are sold.

Is there any further business to come before the meeting? I intend to ask Mr. McRuer to have lunch with me, and if any of you gentlemen would like to join us and continue discussion with us—

Mr. McRUER: I have accepted an invitation that you are supposed to be invited to Senator Roebuck, at whose Committee I am appearing this afternoon, and you co-chairman; I promised I would have lunch with him.

The CHAIRMAN: Well, maybe we can join together; at any rate that is the suggestion I am going to make.

This meeting now stands adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-Seventh Parliament
1966-67

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 26

THURSDAY, FEBRUARY 2, 1967

TUESDAY, FEBRUARY 7, 1967

Respecting the subject-matter of

Bill C-26, An Act to amend the Criminal Code (Safety Devices for Automotive Vehicles),

Bill C-49, An Act to amend the Criminal Code (Dangerous Motor Vehicles),

Private Members' Notices of Motion Nos. 26, 31, and 38;
and also Final Proceedings and Index

Respecting the subject-matter of

Bill C-87, An Act to amend the Criminal Code (Impaired Driving),

Bill C-118, An Act to amend the Criminal Code (Negligence in Operation of Motor Vehicle), and

Private Members' Notice of Motion No. 32.

From the Canadian Labour Congress: Mr. William Dodge, Executive Vice-President; and Mr. Larry Shelle, International Representative, United Automobile, Aerospace and Agricultural Implement Workers of America.

From the Department of Industry, Department of Defence Production:
The Honourable C. M. Drury, Minister.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,

Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee

MINUTES OF PROCEEDINGS

THURSDAY, February 2, 1967.

(30)

The Standing Committee on Justice and Legal Affairs, having been duly called to meet at 11.00 a.m. this day, the following members were present: Messrs. Cameron (*High Park*), Cantin, Guay, Honey, Mather, McQuaid, and Woolliams (7).

In attendance: From the Canadian Labour Congress: Mr. William Dodge, Executive Vice-President; Mr. Harry Jacks, Director of Education and Research, Canadian Brotherhood of Railway, Transport and General Workers; Mr. Gordon McGregor, Canadian Legislative Representative and Chief Agent, Brotherhood of Railroad Trainmen; Mr. Larry Sheffe, International Representative, United Automobile, Aerospace and Agricultural Implement Workers of America.

From the Department of Industry, the Department of Defence Production: The Honourable C. M. Drury, Minister; Mr. W. H. Huck, Assistant Deputy Minister, Department of Defence Production; Mr. D. Wolochow, Secretary, Mr. J. E. Hanna, and Mr. J. Bancroft of the Canadian Government Specifications Board, Department of Defence Production.

There being no quorum, the members present agreed, after discussion, to hear the witnesses in attendance and to ask for a motion at the next meeting to have the proceedings incorporated as part of that meeting.

The Chairman introduced the witnesses from the Canadian Labour Congress and invited them to present a summary of their brief re Bills C-26 and C-49. Following this they were questioned by the members present.

At 12.10 p.m., the Chairman asked the officials from the Canadian Labour Congress to stand down in order to permit the Honourable C. M. Drury to read his brief re Bills C-26 and C-49. Following the Minister's statement, the members present proceeded to the questioning of the Minister.

At the completion of the questioning, the Chairman thanked the Minister for his statement, and invited the officials from the C.L.C. to come forward again. The members present resumed the questioning of the witnesses.

At the completion of the questioning the Chairman thanked the C.L.C. for their presentation.

At 1.15 p.m. the proceedings adjourned to the call of the Chair.

TUESDAY, February 7, 1967.
(31)

The Standing Committee on Justice and Legal Affairs met *in camera* this day at 1.30 p.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Grafftey, Guay, Honey, MacEwan, Mather, McQuaid, Tolmie (10).

Moved by Mr. Tolmie, seconded by Mr. Grafftey,

That the proceedings of Thursday, February 2, 1967, be incorporated into today's Minutes of Proceedings and Evidence.

Carried on division.

Moved by Mr. Choquette, seconded by Mr. Mather,

That the following documents be filed as exhibits,

Resolution of the Canadian Labour Congress re Automobile Compensation Board, Resolution re Traffic Safety (*see exhibit 36*).

Canadian Government Specifications Board "Guide to Traffic Safety" and "Motor Vehicle Safety Standards" (*see exhibit 37*).

Carried on division.

Moved by Mr. Mather, seconded by Mr. Guay,

That the brief of the Canadian Labour Congress of February 2, 1967 to this Committee be appended to today's proceedings (*see appendix 19*).

Carried on division.

The Chairman presented for the Committees consideration three "draft" reports prepared by the Subcommittee on Agenda and Procedure relating to Bill C-118, C-87, and Private Member's Notice of Motion No. 32, respectively.

Following discussion, the Committee adopted the said reports.

Agreed,—That the Chairman present the Fourth, Fifth, and Sixth Reports to the House, (*for text, see Reports to the House*).

At 2.25 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

REPORTS TO THE HOUSE

FOURTH REPORT

Your Committee had referred to it the subject-matter of Bill C-118, An Act to Amend the Criminal Code (Negligence in Operation of Motor Vehicle).

This bill was presented because the incidence of hit and motor vehicle accidents is increasing disproportionately to the normal increase of the motor vehicle accidents throughout the country. It was the belief of the sponsor that the difficulty encountered in establishing as to who the driver was in a hit and run vehicle warranted legislative action. This Bill created a rebuttable presumption against the registered owner of a vehicle in cases where it could not be established who had the care, charge or control of said vehicle. The Committee considers that this Bill would go beyond the premise on which the criminal law is based, i.e. that a person is presumed innocent unless otherwise proven. The Committee is also of opinion that it would create difficulties to some completely innocent persons.

After the initial consideration of the Bill, it was agreed to ask the Attorneys General of the Provinces their opinion concerning this proposed legislation. Except for the Province of Alberta which was in favour of this Bill, the three other Provinces, which replied, were not in favour of this legislation as proposed.

Your Committee does not, therefore, recommend the principle of this Bill to the House.

A copy of the Minutes of Proceedings and Evidence relating to this Bill (Issue No. 1) is appended.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

(presented Wednesday, February 8, 1967).

FIFTH REPORT

Your Committee had referred to it the subject-matter of Bill C-87, An Act to Amend the Criminal Code (Impaired Driving), sponsored by Mr. Mather.

In considering this proposed legislation, your Committee held nine formal meetings over the period April 26, 1966 to November 24, 1966. The following witnesses were heard during the formal proceedings:

Mr. Barry Mather, M.P.; Dr. Wallace Troup; Mr. R. M. Anthony, Dr. Ward Smith, Mr. W. F. Bowker, of the Canadian Highway Safety Council; Mr. Robert Malkin; Mr. J. Douglas Tracy; Mr. Anthony Bazos; Mr. Perrault Casgrain, Mr. A. Gordon Cooper, Mr. Ronald Merriam, of the Canadian Bar Association; Mr. I. M. Rabinowith.

The following were printed as appendices to the Minutes of Proceedings and Evidence:

Brief of Mr. A. Bazos.

Canadian Bar Association resolution.

Canadian Bar Association brief.

Graph by Dr. I. M. Rabinowitch—comparative results of alcohol in venous and arterial blood.

Canadian Highway Safety Council—"Alcohol and Traffic Safety".
with the following being made exhibits:

"Breath Tests for Alcohol" by H. Ward Smith, Ph.D., and D. M. Lucas, M.Sc.

"The Development of a Large Scale Breath Testing Programme in Ontario." by H. Ward Smith, Ph.D., and D. M. Lucas, M.Sc.

"Use of the Breathalyzer in Ontario—1965" by R. Hallett, M.Sc.

"Alcohol Detector Tube of R. F. Borkenstein" by R. Hallett, M.Sc.

Drinking and Driving, by H. Ward Smith, Ph.D.

The Drinking Driver, Report of a Special Committee of The British Medical Association, 1965.

"The Roles of Carbon Monoxide, Alcohol and Drugs in Fatal Single Car Accidents; Alcohol, Drug and Organic Factor Study", by the Department of California Highway Patrol.

Alcotest apparatus with accompanying brochure.

1964-65 Report of the Minister, Ontario Department of Transport.

"Accident Facts, 1965", Statistics relating to motor vehicle traffic accidents, Ontario Department of Transport.

"Methods of Forensic Science", Volume IV, by H. Ward Smith, Ph.D.

Letter from Mr. C. E. Laybourn, Director of Traffic Safety, Ontario Department of Transport to Mr. P. J. Farmer, Canadian Highway Safety Council.

Fatal Motor Traffic Accidents on the King's Highway Only—May 1966, by the Planning Board, Traffic and Planning Studies Section, Ontario Department of Highways.

"Proposals for detecting impairment of skill caused by intoxication sleep deprivation and similar influences", prepared by Dr. C. B. Gibbs of the National Research Council.

Technical Note. 3 "Motor Vehicle Safety—The Driver Alcoholically Impaired".

Letter of January 10, 1967 from R. A. Bartlett, Registrar of Motor Vehicles, Government of Newfoundland and Labrador to Mr. A. J. P. Cameron, Chairman of the Committee, communicating a resolution passed at a public conference on highway safety in that province.

Members of your Committee also visited the National Research Council where experiments in degrees of impairment variation among individuals are

being carried out by Dr. C. B. Gibbs, B.Sc., Ph.D. It is the Committee's hope that these experiments will continue as an aid to this whole problem.

Your Committee was concerned by the record of highway accidents in Canada—100 persons killed, 3,000 injured, \$14,000,000 in economic toll every week of the year. The Committee was informed by witnesses that highway safety organizations and law enforcement agencies of the world identify alcohol as an important element in traffic accidents. (A report of the Ontario Department of Highways on Fatal Motor Vehicle Traffic Accidents on highways in Ontario for May, 1966, Exhibit 16, shows that drinking was involved in 50 per cent of the accidents.).

One witness only, Mr. Anthony Bazos, disputed that alcohol was a major traffic accident cause.

In considering this problem and the legislation proposed to combat it, your Committee kept in mind two basic matters concerned with mandatory breath tests for impairment: the medical and civil rights factors.

In respect to the first, we had notable testimony from Dr. Wallace B. Troup, retired former Chairman of the Canadian Medical Associations' Traffic Accidents Committee, and from H. Ward Smith, Ph.D., Forensic Scientists, Director of the Ontario Attorney General's Laboratory. Dr. Wallace B. Troup and Dr. H. Ward Smith gave data from North American and European authorities testifying to a relationship between blood alcohol and impairment. Both supported breath tests (breathalyzer), as a means of determining accurately the degree of blood alcohol levels.

From Dr. I. M. Rabinowitch, O.B.E., retired, your Committee had notable testimony, in some respects conflicting with that of Dr. Troup and Dr. Smith as to the degree of accuracy in relation to breath tests and blood alcohol levels. However, Dr. Rabinowitch, with four qualifications, acquiesced to the breath tests as a standard for determining alcohol blood levels for statutory offence purposes.

It is the opinion of your Committee, having heard these witnesses and examined documents in detail dealing with breath tests in various countries for impaired driving, that such tests are an accurate method of determining blood alcohol levels.

In respect to the civil rights questions involved, your Committee was much in the position of the Canadian Bar Association who, in evidence presented to the Committee on November 1, 1966, stated:

"What concerned us greatly was reconciling the civil liberties, and traditional rights of an accused with this legislation and we thought that by saying that this would be made compulsory... speaking from the Criminal Code point of view... we would not deprive the citizen of a fundamental right. Whether a man is asked to breathe into a policeman's face when he is arrested or into a machine, which will be more accurate than the policeman's impression, to determine whether he has alcohol in his system or not, we feel does not really create such a tremendous attempt to waive the rights of a citizen that it should not be adopted."

This was on the basis of including in the legislation many safeguards to protect civil liberties and the rights of the accused person.

Your Committee heard argument that the degree of impairment varies to such an extent between individuals that no standard level of blood alcohol could fairly be set for all. The Committee also heard argument that just as there exists in law a set speed limit beyond which a driver may not drive, regardless of individual driving skills, so there should be a set alcohol limit.

Your Committee does not accept the opinion that, as is proposed in Bill C-87, a blood alcohol level of a certain amount (.08 percent) is "conclusive evidence of impairment" to drive. As noted, the law does not attempt in respect of highway driving speed to establish whether one driver is unskilled or dangerous and another not. It states simply that it is against the law to exceed a certain level of speed.

Your Committee recommends that the Criminal Code be amended to provide for legislation as follows:

1. Making it unlawful for anyone with a blood alcohol level of .08 percent or more to drive a motor vehicle; that the blood alcohol level be determined by analysis of breath with provision, at the request of the accused, for blood and urine tests as confirmation of the results; that the accused be offered a sample of the material to be tested to determine the level; that the analysis on behalf of the Crown be conducted by a duly qualified technician; and that the accused be afforded the opportunity to cross-examine everyone who takes part in the sampling and analysis including the person responsible for maintenance of analysis equipment.
2. Making it an offence for any person to refuse without cause to give a sample of breath when required to do so by a law enforcement officer who has reasonable grounds for believing that such a person has committed an offence as set out in the previous paragraph.
3. That the offences recommended above be punishable on summary conviction.

A copy of the relevant Minutes of Proceedings and Evidence (Issues Nos. 2, 6, 8, 12, 13, 14, 15, 17 and 18) is appended.

Respectfully submitted,

A. J. P. CAMERON,

Chairman.

(presented Thursday, February 9, 1967).

The Standing Committee on Justice and Legal Affairs has the honour to present its

SIXTH REPORT

Your Committee had referred to it Private Members' Notice of Motion Number 32:

"That, in the opinion of this House, the government should give consideration to the advisability of amending the Government Airports

Concession Operations Regulations to provide, by virtue of its power to regulate the performance of any service for persons on the airport, that no licence be granted by Her Majesty in Right of Canada for the operation of insurance vending machines."

Your Committee has heard evidence from various officials from Mercury Travelsurance Inc., Omaha Teletrip Inc., Canadian Airline Pilots' Association, and Mr. J. R. Baldwin, Deputy Minister of the Department of Transport with officials from his department. The Committee also heard evidence from Mr. Basford, M.P., sponsor of the Notice of Motion.

The following documents were printed as appendices to the Committee's proceedings:

Passenger fatality Rates 1945-65;
Resolution of International Federation of Air Line Pilots Association;
Brief of Mercury International Travelsurance Agencies Ltd.;
Brief of Mutual of Omaha and Tele-Trip Inc.;

with the following documents made exhibits:

"The Relationship between Airline Sabotage and Air Trip Insurance.", Civil Aviation Branch, Department of Transport.

"Insurance Concession at Departmental Airports" (prepared by The Department of Transport).

DOT Accident Report of the Douglas DC 6 B, CF-CUQ at 100 Mile House, B.C., on July 8, 1965.

DOT Accident Report of the Douglas DC/3, CF-CUA, near Quebec, P.Q., on September 9, 1949.

Mutual of Omaha specimen policies for vending machines pertaining to air trip insurance.

Letter from Mr. Grant to the Minister of Justice dated October 7, 1966; letter to Mr. Grant from the Director, Airports and Field Operations, Department of Transport, dated October 31, 1966; letter from the Department of Justice to Mr. Grant, dated October 13, 1966; letter from Mr. Grant to the Department of Justice, dated December 5, 1966; letter from the Department of Justice to Timothy D. Ray, Clerk of the Committee, dated December 12, 1966.

Letter of October 26, 1965, from Mr. Richard Humphrey, Superintendent of Insurance to Mr. R. Goodwin, Director, Civil Aviation, Department of Transport.

Letter of August 20, 1965 from Mr. Gordon H. Stewart, President, Canadian Air Line Dispatchers Association, to the Honourable J. W. Pickersgill.

Letter of August 4, 1965 from Alastair R. Paterson of Manning, etc. to Captain J. H. Foy, President, Canadian Airline Pilots' Association.

Letter of August 3, 1965 from Mr. F. A. Walton, Executive Vice-President for Canada, Mutual of Omaha Insurance Company to Mr. R. W. Goodwin, Director of Civil Aviation, Department of Transport.

Letter of July 26, 1965 from Mr. C. B. Archibald of C. B. Archibald Ltd., Engineering Consultants, to Mr. Jack Davis, M.P.

Letter of July 20, 1965 from Mr. R. H. Barron, Barrister and Solicitor to the Honourable J. W. Pickersgill.

Letter of June 21, 1965 from Captain W. J. Rodgers, of C.A.L.P.A., to Mr. R. W. Goodwin, Director, Civil Aviation, Department of Transport.

Letter of October 22, 1958 from Miss Marjorie MacLaughlin to The Superintendent of Insurance.

U.S. Report of Government-Industry Steering Committee on Airline Sabotage, and Report of Subcommittee on Relationship of Insurance to Airline Sabotage of March, 1963.

Details of Concession Fees from Airtrip Insurance Fiscal Years April 1, 1960 to March 31, 1965, prepared by the Air Services, Department of Transport.

Letter of January 27, 1967, from Montreal Board of Trade to Mr. A. J. P. Cameron.

The Committee was sympathetic to the case against the operation of insurance vending machines in airports, as presented by The Canadian Airline Pilots Association, but the total evidence presented to the Committee was insufficient to warrant a firm recommendation at this time.

Your Committee therefore recommends to the House and the Government that the matter be studied further.

A copy of the relevant Minutes of Proceedings and Evidence (Issues nos. 13, 23 and 24) is appended.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

(presented Tuesday, February 14, 1967)

APPENDIX "19"

Submission by the Canadian Labour Congress to
the Committee on Justice and Legal Affairs of
the House of Commons

Mr. Chairman and Members of the Committee:

1. The Canadian Labour Congress appreciates this opportunity to appear before you. We are pleased that you are giving consideration to Bills C-26 and C-49, both having to do with traffic safety. As a major trade union centre, the Congress has not only concerned itself with the economic and other issues which are more generally recognized as coming within the scope of its activities, but also those matters which otherwise affect the health and well-being of its members and their families. Health and safety fall into the latter category and the Congress has for some years maintained an active Health and Safety Committee and has been a member of and participant in the work of the Canadian Highway Safety Council.

2. We propose in this brief to deal with traffic safety in a broader base than is implied in the two Bills under review. We believe, as you will see below, that traffic safety involves more than the quality of the vehicle itself, although this is obviously important. We consider the proposed legislation deficient in this respect, hence the views expressed here.

The Driver

3. The most important problem in traffic safety is the driver. This is true not only of the small percentage of irresponsible drivers who seem to make a habit of violating the traffic safety laws, but also those who have never received training in the proper method of "driving so as to prevent accidents in spite of the wrong actions of other drivers, or adverse conditions" (National Safety Council definition of a defensive driver).

4. Several years ago the National Safety Council in the United States came out with what was then called a Driver Improvement Program but which has since been referred to as a course in Defensive Driving. This is an eight-hour classroom course consisting of training films, other visual aids, lectures and discussion and printed material on defensive driving. The course was introduced into Canada, is now operating in Ontario and Alberta and will be extended into other provinces as finances and interest increase. The course has received very enthusiastic response wherever it has been given. Here in Ottawa, for example, the Ottawa Safety Council has so far run five courses for the public and one instructors' course. Further courses are being organized. The Department of Energy, Mines and Resources has put the course on for 200 of its employees in Ottawa and the Armed Forces are considering adopting it as well. In our opinion this course can serve a useful purpose in helping to prevent accidents by teaching drivers how to avoid becoming involved in a situation which could result in an accident or what to do to avoid an accident should they become involved in such a situation.

5. We feel further that a concerted effort should be made to promote driver education in the high schools. Since a large proportion of traffic accidents occur among the age group 16 to 25, this ought to be a matter of grave concern. What better way of reducing this incidence than by teaching defensive driving in schools? Statistics have shown that where there has been a concentration on driver education in the high schools, traffic accidents among the 16 to 25 age group have been reduced by some 40%.

6. Secondary education is admittedly a matter coming within the provincial domain and we realize that Parliament is unable to legislate along the lines suggested here. We believe, however, that a strong position taken by your Committee on driver education in the high schools will have an influence in the various provinces and will strengthen the efforts of those who support such a program.

Traffic Regulation Enforcement

7. Greater emphasis should be placed on traffic regulation enforcement than is now the case. Although this is basically a provincial matter, we feel that here too the views of your Committee will carry a good deal of weight.

8. We believe that there should be stiffer penalties for the more severe types of traffic violations, especially those which involve death or serious injury. The punishment should fit the crime, especially where there has been a flagrant violation of the law, as in the case of impaired drivers. In a recent newspaper account a man who had robbed a store manager of \$2,000 received in excess of two years in jail, while another who was found guilty of impaired and dangerous driving involving death and serious injury to others was given two months and a license suspension of year. We consider this to be a serious imbalance in imposing sentences. We feel that a two-month sentence where death and injury were involved is not a sufficient deterrent in our traffic safety problem. We believe also that all drivers convicted of traffic violations which indicate either a disregard for, or ignorance of the rules of the road, should be required to be retested and if necessary to attend a driving course such as the one mentioned in the first part of this brief, before being allowed to drive again.

Period Vehicle Inspection

9. There should be a system of compulsory vehicle inspection on a periodic basis, similar to that which has been in force in Vancouver, British Columbia, for many years. Recent experience has shown that where spot checks have been made on automobiles for mechanical roadworthiness, an appreciable number of vehicles have been taken off the road because of mechanical imperfections that could result in traffic accidents. Many accidents which are blamed on "mechanical failure" in reality have been the result of human failure, where the operator has failed to properly maintain his vehicle and have periodic check-ups done.

10. We do not suggest there are no real mechanical failures which cause accidents. We feel that in every case of a major accident which cannot readily be attributed to some other cause, the vehicle or vehicles involved should be impounded by the authorities so that a thorough investigation can be made to determine whether or not a mechanical failure was the cause of the accident. This would be somewhat similar to the kind of investigations conducted by the civil aviation authorities. We recognize that there are accidents caused by true mechanical failures and we deal with this below.

Licensing Provisions

11. Drivers' licences are still too easy to obtain and action should be taken to make it more difficult for drivers to receive their licences and retain them. At present in most provinces an applicant merely has to pass a written and oral test on his driving knowledge, have a simple eye test and then a relatively simple driving test with an inspector. We believe that a stricter examination is necessary to determine what driving and traffic knowledge the applicant has and how much skill he has in manouvering a vehicle through varying degrees of traffic. Driver retesting such as is being inaugurated in the Province of Ontario is an important improvement in the field of licensing and traffic safety.

Safety Devices in Cars

12. The Canadian Labour Congress goes on record as condemning the auto industry for its poor performance in the field of traffic safety. In our opinion the hundreds of millions of dollars spent on advertising to condition the public to purchase new models and unimportant accessories, could be used in part at least to educate the car driver to practice traffic safety. The excuse offered by the industry is that the public doesn't want safety devices; it wants style. We submit that with the engineering and design skill available to-day it is possible to have both.

13. Legislation is necessary, in our opinion, to assure optimum mechanical safety. We wish to see installed in cars as standard equipment those safety devices which would provide better driving aids and greater safety for driver and passengers in the event of a collision. These would include: better side and rear view mirrors, a more reliable steering mechanism, a dual braking system, properly padded dashboards with recessed or break-away knobs, an energy absorbing steering column, a safety belt for every passenger, clearly visible turn signals, four-way flashers, safety glass all the way round the vehicle, the removal of the rear window ledge (which is a depository for sundry objects which become lethal weapons in a crash or sudden stop), rear window defrosters, safety belts in busses and other public vehicles, and other devices which can increase safety in driving and help to decrease injury in the event of a collision.

Tire Standards

14. Tires should be regulated as to their quality. They should provide protection in ordinary operation against early blow-out and include a standard tire pressure for all types of loads and driving conditions. Safety rims which would allow the driver to keep control of the vehicle in the event of a blow-out should also be mandatory on all vehicles.

Uniform Traffic Control

15. Long distance driving has become commonplace. Canadians travel widely not only in their own country but abroad as well. It is essential that drivers be accustomed to seeing and responding to standardized traffic signs and symbols wherever they are. With this in mind, the government has produced *A Guide to Traffic Safety*, prepared by its Specifications Board. It is intended that the signs and symbols included in the *Guide* should receive universal acceptance, and action in that direction has already been initiated. We ask your Committee's support of this important measure.

Car Inspection and Design

16. Automotive vehicles should be subject to inspection by federal inspectors during the manufacturing process. Standardized federal controls are necessary in order to ensure quality control inspection, for the same reasons that the federal government intervenes in the production of food and drugs, aircraft railway equipment and marine vessels. There is an abundance of evidence to indicate that the manufacturer-controlled system of inspection in effect in the automotive industry is unsatisfactory. The large number of cars being recalled after sale speaks for itself.

17. Consideration should also be given by your Committee to the problem of production standards, that is, the pace at which workers are required to work on the automobile assembly line. An excessive work pace imposed by the employer must and inevitably does result in some cars being improperly assembled. This, when coupled with unsatisfactory inspection procedures, constitutes a hazard to the public whether as drivers, passengers or pedestrians. Our affiliate, the United Automobile Workers, is prepared to provide evidence in support of this claim.

18. Much has already been written about the priority which car manufacturers give to appearance over safety. We do not propose to elaborate on this here. But we ask that you insist in your report on a reverse in priority. It is possible, we submit, to produce a car which is both attractive to the eye as well as safe to the user. In any event, since car accidents are one of the major health hazards of our time, we believe that primary consideration must be given to safe design.

Conclusion

19. The Canadian Labour Congress realizes that many of the recommendations made in this brief come within provincial jurisdiction. But we feel that your Committee can and should make recommendations to the appropriate authorities to help bring under control this very serious traffic safety problem.

20. We wish to thank you for the opportunity of presenting this brief to you and hope it will help you in drafting the kind of legislation which will provide a major step forward in the solution of one of the most serious hazards facing the Canadian people to-day.

Respectfully submitted,
Canadian Labour Congress,
Claude Jodoin, President,
Donald MacDonald, Secretary-Treasurer,
William Dodge, Executive Vice-President,
Joseph Morris, Executive Vice-President.

Ottawa, February 2, 1967.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY FEBRUARY 2, 1967.

The CHAIRMAN: We are going to have some difficulty because quite a few members are not in Ottawa, but some will be back this afternoon.

Mr. Dodge, would you mind coming up, together with your group?

Mr. Drury, as you know, is going to be before the Committee at 12 o'clock, and I do not know whether we shall have a quorum then. If we do not, we shall have to adjourn at that time.

I thought we might go ahead and give Mr. Dodge and his colleagues an opportunity to explain their brief to us. We will put it on the tape and later on, when we have a full quorum, the matter can be regularized so as to be printed as part of our proceedings; that can be attended to. However, I would not want Mr. Drury making his statement without a full quorum of the Committee here.

As far as I can see at the present time it is going to be extremely difficult to get the extra three people that we require.

Now, I would be glad to have an expression of opinion from the members as to what their views are. Would you like to have Mr. Dodge and his colleagues explain their brief to us, so we will have it on tape for future reference, or would you rather adjourn the meeting?

Mr. MATHER: Mr. Chairman, if I may say so, if that procedure is acceptable to the witnesses, it would be convenient to members of the Committee who are here to have them table that information.

Mr. HONEY: I would agree with that. If the minister does not come, we only have about 15 minutes for Mr. Dodge and his associates, and I wonder whether we could also spend a few minutes with questions and have those recorded on the tape. If we wanted to examine Mr. Dodge after he makes his presentation, could we also record that on the tape?

The CHAIRMAN: Yes, if that meets with the approval of those present. Mr. Dodge, I apologize for the lack of quorum; it has been very very difficult.

Mr. William Dodge is executive vice-president of the Canadian Labour Congress. I imagine you will be the first to discuss your brief, will you, Mr. Dodge?

Mr. WILLIAM DODGE (*Executive Vice President, Canadian Labour Congress*): Yes, sir.

The CHAIRMAN: He is accompanied by Mr. Gordon McGregor, is that correct?

Mr. DODGE: Yes.

The CHAIRMAN: Mr. McGregor is the Canadian Legislative Representative and Chief Agent of the Brotherhood of Railroad Trainmen of Ottawa. Are there any others with you?

Mr. DODGE: I was expecting Mr. Sheffe of the United Automobile Workers here, Mr. Chairman, but owing to some misunderstanding about the time of the presentation he has not arrived; but I do have two out of three and that is a quorum anyway.

The CHAIRMAN: Thank you very much then, Mr. Dodge, and without any further remarks on my part I would ask you to make your comments on your brief.

Mr. DODGE: Mr. Chairman, I believe members of the Committee have received copies of the brief, and it is a very short one. I think that a brief glance at the headings of the sections will give the members a pretty good idea of the trend of our thinking on the question of auto safety. We perhaps lay more stress upon the importance of the driver in auto safety than other bodies have, and we are very much in favour of an extensive program of training in what has come to be called defensive driving. I think this is the essential part of the program which is going to reduce the number of fatalities and injuries due to the use of the automobile.

We also believe, of course, in stringent enforcement of traffic regulations. We think that it is not sufficient to have cars equipped with safety factors at the manufacturing stage, but that there ought to be periodical vehicle inspection during the entire period the car is in use, either by the person who bought it in the first place, or those who may buy it through second hand purchases at later stages in the life of the vehicle.

I may say that the other day I was in Edmonton driving a rental car, and I was preceded down the road by a vehicle in very bad condition, with its front wheels wobbling very badly; it was evident from the appearance of the front of the car that it had been in a very severe accident. One is prompted to wonder why cars like that are allowed on the road. Evidently there is some breakdown in the inspection of vehicles of that kind; it was quite clearly an accident hazard.

We believe in severe, stringent regulations for the inspection of cars, whether they be new or second hand. We think that drivers' licenses are too easy to obtain in some jurisdictions, and that there ought to be a strong regulation of the licensing of drivers.

As for safety devices in cars, which gets down to the business of the two bills before this Committee—Mr. Wahn's and Mr. Southam's—I think we would feel that there is room in legislation for the elements of both of these bills, but that neither one of them is sufficient in itself as a safety law. We think that there ought to be specific requirements concerning a list of specific devices. If, as someone has said, it may be necessary to amend it either by adding to it or deleting from it at later stages, that is really not such a difficult procedure. If there is an absence of specific provisions—if the items are not specifically listed—it is left to too wide an area of discrimination as between what is safe and what is not. On the other hand, we think that it ought to be possible for authorities to make a judgment upon the general safety condition of a vehicle.

second hand vehicle might have attached to it, all of the quipment listed in Mr. Southam's bill, but still may be unsafe. Consequently, it is necessary for some leeway to be given to people who are going to make a judgment about that, to exercise that judgment. I think the principles of the two bills might be combined to the advantage of people who might suffer from accidents.

We deal with the safety items, which are discussed quite commonly across this continent now, in section 13. We deal with tire standards in section 14.

We deal with traffic control and driver training in traffic signs, and endorse the idea of a guide to traffic safety, in paragraph 15. Then we come down in favour of inspection at the manufacturing phase of vehicles, in the same way as aircraft, marine vessels, railway equipment, and food and drugs are subject to inspection.

That, I think, about sums up the contents of the brief, and is about as much as I can contribute at this time, sir.

The CHAIRMAN: Thank you very much, Mr. Dodge. Mr. McGregor have you anything you would like to add?

Mr. Gordon MCGREGOR (*Canadian Legislative Representative and Chief Agent, Brotherhood of Railroad Trainmen*): From the railway employees' point of view, Mr. Chairman, there is just one point that has not been touched in the brief. Because of the accidents at level crossings, we have on occasion recommended to the cabinet to have the National Research Council develop some form of a transistor that can be put on trucks carrying explosives and dynamite, which would alert the train when it comes into a certain block—as we call it—within a level crossing area that is not protected, that could alert the driver that a train is in the vicinity. In this way, we could try to eliminate some of our level crossing accidents that we have had with school buses and trucks, as the case might be. That is about all I have to add.

The CHAIRMAN: Thank you, Mr. McGregor. I was wondering Mr. Dodge, or Mr. McGregor, would either of you care to comment on the inspection of motor vehicles as they come off the production line? We had some suggestion that automobile workers considered that was something that could be improved upon.

Now, are these two gentlemen your colleagues?

Mr. DODGE: Yes, sir.

The CHAIRMAN: Maybe one or the other of them might comment in regard to the inspection of a new automobile as it is on the production line. I understand at the present time they are more or less spot checking every tenth car, or something of that nature, and then the others are passed through without that final inspection. We would like to have your views on that. Mr. Larry Sheffe, gentlemen; if you will just speak right into that little microphone, Mr. Sheffe, everybody will hear very clearly.

Mr. Larry SHEFFE (*International Representative, United Automobile Workers*): Yes, sir. Up until about 10 years ago, the automobile industry had a constant inspection system, where there was constant inspection of the cars on the line. They changed that to what they call a quality control system, which is just another nice name for inspection, but they put the responsibility for inspection in the hands of their production people. As you know, production

people are charged with the responsibility of getting their product out, and in manufacturing—especially assembly line manufacturing—there is always friction between the inspection people and the production people. Inspection wants to hold the product up for thorough inspection, and production wants to get it out.

With the inspection responsibility in the hands of the production people there is not the thorough kind of inspection that there was under a separate inspection system. The spot check really is about 1 every 100 cars rather than 1 in 10. We are very much concerned about this; we are concerned about it in the United Auto Workers Union because of the decline in car sales, which we think is largely because of the recall of cars and the scare in the mind of the public as a result of hundreds of thousands of cars being recalled to check on either improper assembly or something wrong with the design of the steering mechanisms, or braking systems, or some of the other faults that have turned up.

Now, we say there are two reasons for this, and it has been covered in the brief. No. 1, is the lack of a proper inspection system; and No. 2, the production standards, or the rate of the assembly line which makes it impossible for the assemblers to do a thoroughly proper job of assembling autos. There have been instances, fortunately in the testing area, where a car comes off the assembly line and they drive it around the track and the wheels start to wobble because the nuts have either been missed or just put on finger tight. There was one instance in Chrysler—maybe I should not be mentioning names—of a steering wheel coming off in the hands of the tester.

The CHAIRMAN: An auto vehicle manufacturer.

Mr. SHEFFE: Yes, I am sorry; that was a slip. However, these are cases which our local union people have documented in their offices in Windsor; they were not able to get in today. But these are two of the factors which concern us very much, and which are largely responsible for some of the improper assemblies and some of the mechanical failures that have resulted in the manufacture recalling large numbers of automobiles.

The CHAIRMAN: Were you intending to bring someone here from Windsor?

Mr. SHEFFE: We had hoped that there would have been another presentation from the U.A.W., at which some of our people would have been in. They did not know, and neither did I until too late that these hearings were coming to a close.

The CHAIRMAN: You know we were in Windsor, and when we invited them to appear before us they did not indicate whether they wanted to or did not want to.

Mr. SHEFFE: I did not know that our union had been invited; my information was that they were not invited. I was in Windsor at the same time you Committee was, and I did not know they were there until I was leaving for the airport myself.

The CHAIRMAN: Well, I think it would be of great assistance to the Committee if we could have someone who was really working on the production line or working right in the motor vehicle manufacturer's premises, to give that type of evidence.

Now, Mr. Guay had his hand up for a question, and then Mr. Mather, and Mr. Honey. Do any more of your colleagues wish to make presentations?

Mr. DODGE: No.

The CHAIRMAN: Mr. Guay? Mr. Guay will be talking to you in French so you can put this on your ear.

(Translation)

Mr. GUAY: First of all, Mr. Dodge, I note from your brief—and you have recognized it yourself in some of its lines—that you are mostly concerned with provincial jurisdiction. Now I would like to know whether the same brief or an identical brief has been or will be submitted to the provinces, that is to say the competent jurisdiction?

(English)

Mr. DODGE: Yes. You have noted also maybe, that in this very brief, we have touched upon the question of jurisdictions. You will note that if the Federal Committee makes recommendations, that will obviously have an effect on the various legislations that may as a result be adopted by provincial legislatures. The fact is that every year the Canadian Labour Congress has chosen a specific month which we call citizenship month. In the course of that month, we engage in a campaign on a specific subject such as welfare matters, old age pensions, etc. Last year, in 1966, we organized a citizenship month on this particular subject. At that time we distributed throughout Canada, to all federations affiliated to our Congress, a great deal of information on this subject so that they can make the necessary representations in their respective legislatures throughout Canada. We recognized the fact that jurisdiction, in this respect, belongs to the provinces.

(Translation)

Mr. GUAY: Mr. Dodge, the question that I asked was: Has this been already done, have briefs along the same line been presented by the affiliate unions to the provincial legislatures? What has been the reception? For instance, as far as I am concerned what has happened with regard to the province of Quebec?

(English)

Mr. DODGE: Well, I cannot say that this particular brief has been presented, but I would say, Mr. Guay, that there has been a similar one.

Mr. GUAY: Yes.

Mr. DODGE: Yes. Generally, it is accepted by the provinces in some cases, you have noted that the provinces have themselves set up committees or commissions to carry out an inquiry into this. In British Columbia particularly, a Royal Commission, I think, was set up in order to consider all matters that are dealt with in our brief. In some other provinces, they have started taking action on the subject.

(Translation)

Mr. GUAY: Another question. Do you think that the car manufacturers will have inspection under government control, as regards road safety in particular?

(English)

Mr. SHEFFE: We are recommending that the government take the same step with the auto industry as they do in food and drugs, and shipping, and aircraft, in having a federal inspection system, not to inspect the vehicles, but to check on the quality control systems. I say this is important, because quality control, or

the production standard, is also a part of the quality control, and these are the two areas in which the federal government—and which we submit in the U.A.W.—and the Canadian Labour Congress ought to be able to move. I think it is self-evident, with the thousands and thousands of cars in Canada that are being recalled and the hundreds of thousands of cars that are being recalled in the United States, where the manufacturing process is the same, that something is radically wrong. Workers are not being fired for poor workmanship; therefore it is not necessarily in this area; it must be in the process of the inspection system and the production standards.

(Translation)

Mr. GUAY: A supplementary question on the subject. Do you think that in accordance with the representations made by the CLC, corporations will favourably receive the inspection as was mentioned by Mr. Dodge earlier, the same way in which this is done for drugs for instance, an inspection of cars that are being placed on the market?

Mr. DODGE: As far as I am concerned I do not think so. Of course, evidence gathered since the investigations and inquiries that were made in the United States would indicate that the corporations would not accept this without protest. They are doing nothing about the recommendations that are currently being made.

Mr. GUAY: As a matter of fact do they object particularly because they see that it is very difficult to set up the necessary staff, do they lack the necessary staff of competent inspectors? Do they have sufficient inspectors to carry out this work? Is that the factor or is it merely a question of opposition on the part of automobile corporations.

(English)

Mr. SHEFFE: Well, 50 per cent of their inspection system was let go when they changed the constant control system to the present quality control system. I do not think it is a question of lack of numbers; I think the inspection system is in the wrong hands. If the production people are charged with the responsibility of getting the product out the door, then they ought not to be charged with the same responsibility of inspecting that product, if it is going to be a proper quality control system. How can the production people have two sets of responsibilities which are opposed to each other? It just does not work, and I think this is one of the problems. I might say we are very much concerned about it, because, as I said earlier, I believe that the reduction in the sale of cars brought about, to a good degree, by this scare, and we are concerned about that because it affects the employment of our membership. It is going to affect the employment of membership in all the related industries: steel, rubber, glass, plastics, textiles and all of the others who depend on the automobile industry for a fair percentage of their work.

(Translation)

Mr. GUAY: Do you think that we can suggest, in the rather near future solutions to what seems to be a rather major and significant problem, that road safety?

English)

Mr. SHEFFE: I do not know how soon a solution can be reached. I think the auto industries have a responsibility to solve this themselves, but apparently they have not yet decided to take any effective steps. I would think they would be concerned about loss in sales, too, but we have seen no evidence of this. We have been pressing in the industry for another look at the production standards and another look at the quality control system, but there does not seem to be any indication that they are moving in this direction. This is where I feel that government control is necessary, the same as it is in air space and in other transportation systems.

Translation)

Mr. GUAY: In other words, can we say that this is not a desperate situation, even if you are saying that it will be in the more or less distant future, of course, we do not know when the day will come that we can reach a solution. But do you think that this is a desperate situation or do you think that we can expect that there will be a solution to the problem?

English)

Mr. SHEFFE: I think it is desperate for two reasons: One, if there is evidence of mechanical defects as a result of the assembly, then certainly the public who are driving these cars are in danger. If wheels, for instance, should come loose on the assembly line, or in the testing area, they may be just a little tighter so they will get by the testing area, and come loose while a motorist is driving on the highway. Braking systems have failed and there have been evidence of the braking system failing after 200 or 300 miles. There has been evidence of the steering mechanisms failing, and we have too many people being killed and injured on our highways without having it done by the carelessness of the manufacturer.

The CHAIRMAN: Are there any further questions.

Mr. MATHER: Mr. Chairman, I have a few questions. First of all, did I understand Mr. Sheffe correctly when he said that the changeover from the former method of assembly line inspection, total inspection or continuous inspection to the so-called quality control resulted in a 50 per cent reduction in the inspection staff?

Mr. SHEFFE: That is correct.

Mr. MATHER: I have a related question to that; my understanding is that many of the parts which are assembled in car manufacturing are made in separate industries in separate places. Would you think there should also be a tighter system of inspection, in these component part industries of the parts?

Mr. SHEFFE: Let me answer you by saying that there is. This is a strange situation, because the auto industry sets high rigid standards of quality from their parts suppliers. We discussed this at our U.A.W council meeting a couple of months ago and we asked the parts representatives if they had the same problem there and they said "no". The standards that the auto industry sets for their parts suppliers are very high and very rigid. We wish that they were somewhat the same on the assembly line.

Mr. MATHER: In paragraph or point 5 in the general brief, which refers to the importance of driver training in the schools, Mr. Dodge, what would your view be in regard to making driver training part of the curriculum in the high schools, as part of the regular course?

Mr. DODGE: We are very much in favour of this, of course. Again you run into the problem of jurisdiction. We say that if a Committee such as this were to make strong recommendations along these lines, then surely some attention would be paid to it across the country in the jurisdictions where they can act.

Incidentally, besides being an auto worker, Mr. Sheffe is one of the principal authorities in Canada on the defensive driving training program. He has worked very hard in this Ottawa area to promote driver training education in the defensive driving program. Perhaps you would like to say a word about it, Mr. Sheffe.

Mr. SHEFFE: Mr. Mather referred to section 5 of driver education. You will notice in this brief we placed a lot of emphasis on the driver and those controls which affect the driver. My personal belief—and it is too bad Mr. Grafftey is not here—is that this question of safety devices in the automobiles is overrated. Now, I am not saying that I am opposed to safety devices; I think they are necessary, but I think when you put the major emphasis on safety devices, you take the emphasis off the driver where it belongs. I accept Mr. Dodge's kind compliment when he says that I am a principal authority on this subject. I have done quite a lot of work in the last three years on this subject, and most traffic safety authorities with any responsibility at all will tell you that 90 per cent of all driving accidents can be prevented by the driver. However, I do not take the industry off the hook, because I think there are certain driving aids which can be installed in the cars as standard equipment which would improve the driver's ability to handle and control the car.

I think there are some certain safety devices which ought to be included in the car. As we say in the brief, the industry spends millions and millions of dollars to condition the public to buy what I call chrome plated monstrosities and which some people call sheet metal coffins, rather than placing some emphasis on safety. I think if they can condition the public to buy shine and trim and style, they can also condition them to accept safety devices in cars and also they can spend more than they are spending now on promoting driver education and better control of the vehicle, as far as the driver is concerned. I think this is where a lot of the emphasis on the industry belongs.

Mr. MATHER: One last question, Mr. Chairman. I think the brief suggests that the organization favours regular retesting or examination of vehicles aside from their origin at the plant; you would favour a retest or re-examination of vehicles. In my own province of British Columbia we have that and with good results. Would you also favour re-examination of the driver at some period over perhaps three or four years. Would you think that the driver of the vehicle should be asked to be re-examined or tested?

Mr. DODGE: Yes, I would.

Mr. MATHER: Thank you very much.

The CHAIRMAN: Mr. Drury, the Minister of Industry is here now. I would suggest that we hear Mr. Drury's statement, then we can resume the questioning of the officials from the Canadian Labour Congress. Would you like to proceed now, Mr. Drury?

Hon. CHARLES MILLS DRURY (*Minister of Industry and Minister of Defence Production*): Mr. Chairman, I thank you for the opportunity, informal as it may be, of making this statement. The reason I would like to do this is that there has been some interest shown in the house, and I think on the part of the public, by reason of the recent publication in the United States of the mandatory standards to be applied in that country. As a consequence, there will be some interest in the relevance of those standards to Canada, and what would be proposed to be done in this country to assure at least an equivalent protection to Canadian highway users.

When I appeared before you on May 27 last, I reviewed the proposals for a vehicle safety guide and discussed briefly my views regarding mandatory standards. The officials of the Department of Defence Production appeared before you on October 20 and described the 27 safety standards and the guide to traffic safety which were then in the latter stages of preparation.

The standards and guide have both been approved by the Committee and the Canadian Government Specifications Board and copies of these documents are now available for your Committee or for those members who wish them. I might add parenthetically that I understand these can not now be introduced so as to form part of the official record of the Committee, but they are available now and will be distributed.

I might add that these documents are the formal form of the ones which were presented to you at an earlier date and are essentially the same as those looked at or examined in the October 20 meeting.

The Guide to Traffic Safety deals with the human factor, the vehicle and the environment as they relate to highway safety. The Guide makes available to legislators and to the public, for the first time, a comprehensive presentation of the best available data on the cause and prevention of accidents and includes important material on the relationship between driver capability and the relationship between road environment and accidents. It is also designed to foster the proper use of available safety features and assist prospective purchasers in the wise choice of a vehicle by stressing that the highest priority be given to its safety characteristics and to its maintenance.

The Guide further provides evidence of the need for greater uniformity in legislation and regulations which control the licensing of drivers, vehicle inspection and maintenance and which provide for traffic signs and enforcement of the 'rules of the road'.

I believe that the CGSB Committee responsible for the preparation of the Guide and Standards has rendered an outstanding service to the nation and I would like to mention the special contribution of both the Traffic Injury Research Foundation of Canada, the Canadian Good Roads Association and the Canadian Highway Safety Council.

The Committee has made several important recommendations which are as follows:

1. A recommendation that the Provincial Governments include the principle of "implied consent" respecting breathalyzer testing in their relevant legislation, and this recommendation has been referred to the provincial governments by the CGSB Committee.

2. A recommendation that the Federal Government amend the Criminal Code, making it a criminal offence to operate a vehicle while the alcohol content of the operator's breath exceeds a specified limit as determined by the breathalyzer test, has been referred to the Department of Justice and this Standing Committee on Justice and Legal Affairs.

3. A recommendation that the Department of National Health and Welfare be asked to investigate the problem of air pollution by motor vehicles, its effect upon the health of the individual especially in areas of high traffic density, and the effect of such air pollution on the driver, has been referred to that department.

I might add that the Department of National Health and Welfare are now conducting studies into this particular problem.

4. A recommendation that the Federal Government be asked to set up a national accident prevention research center has been referred to the National Research Council which has been conducting a study of the available information on the subject of motor vehicle accidents.

The National Research Council has issued a total of seven technical reports which together represent an important survey of existing world research on the subject.

On the basis of these studies the Council has concluded that there is a need for motor vehicle accident research and that such research in cooperation with regional authorities can play an effective part in minimizing the appalling toll of traffic fatalities and injuries.

I am in complete agreement with this recommendation and accordingly I have asked the National Research Council to implement a program for the build-up of this research activity. I believe it is important at this point to view this Canadian accident research effort in perspective. Owing to the universality of concern for the traffic-fatality rate, the national and world effort in all aspects of road safety will undoubtedly increase, and will be associated in substantial measure with road-vehicle design, with new concepts of traffic systems and traffic systems control and with many new principles of regulation and enforcement.

These are all areas of greatly diffused responsibility and authority, as compared for instance with the relatively compact arrangements governing the control of aviation safety. The problem of road-vehicle safety is greatly complicated by the fact that its technical content is multi-disciplinary and that it is dependent on the administration of a multitude of regional authorities.

The National Research Council has therefore taken the view that its research program must consist of both short term and long term objectives, that its primary responsibility must be the formulation of scientifically proven facts.

and principles, and that the effective deployment of its research effort is dependent on a continuing working relationship with regional authorities and organizations and with international cooperative research activities.

While the establishment of Federal Government motor vehicle safety standards and the publication of the Guide to Traffic Safety represents some progress in the battle to further driving safety, I am sure that all Canadians will realize this struggle is of a continuing duration and one that must receive our best efforts if we are to succeed.

The Government of Canada is greatly indebted to all provincial governments for the important contribution which they have made towards the success of the Canadian Government Specifications Board's work. In cooperation with the various organizations who have given so freely of their time to this work, they have rendered an extremely valuable contribution to the up-grading of automotive safety in Canada. It is my sincere hope that the excellent cooperation which has characterized our work to this stage will remain a feature of future collaboration in this important area.

When I first instructed the Canadian Government Specifications Board to prepare safety standards it was proposed that the standards be voluntary in nature. It was the intention of the Federal Government to adopt them in its own purchases and it was hoped that other large purchasers of vehicles would adopt them in their purchasing. In this way there would be some incentive to manufacturers to produce all cars with these safety devices. At that time the thinking in the United States was similar. Their General Services Administration promulgated safety standards for use in the purchase of vehicles for the Federal Government and it was thought that these might, through voluntary action by manufacturers, lead to production of safer vehicles.

There have been very significant changes in the automotive safety field in the United States since then. Legislation to make safety standards mandatory has been enacted and under the provisions of this act, proposed interim motor vehicle safety standards were issued on December 3, 1966. Those interested were given one month to comment and revised standards were issued on January 31, 1967, with a 30-day allowance for appeal. Until the time for appeal has expired, the mandatory standards cannot yet be definitive. We are following this matter closely so that Canadian standards will be compatible with the U.S. standards.

When approved, these American standards will apply to motor vehicles in the United States, whether domestically produced or imported, and these standards will supersede all existing State standards. Motor vehicles made in Canada for sale in the United States will have as a consequence to meet the American standards. Similarly, cars made in Europe and Japan for export to the United States will have to conform. This has caused serious concern to members of the Organization for Economic Cooperation and Development (OECD). At a recent meeting of a Working Party of OECD, at which Canada was represented, several members contended that the proposed U.S. safety standards would be effective non-tariff barriers to trade.

Assurances have been received that American designed cars produced in Canada or imported into Canada from the United States will conform to the U.S. standards. In any case since the bulk of Canadian and U.S. production to these

designs will have to conform to the United States safety standards it would be economically unsound to produce special designs for Canadian consumption. Hence, it is almost certain that all American designed cars sold in Canada will conform to the U.S. standards but also on the Canadian market are cars imported from Europe and Japan and some European cars assembled in Canada. For these there will be no assurance of adequate safety standards unless legislation similar to that enacted in the United States is adopted here. The constitutional right of the Federal Government to legislate in the field of imports is clear. If such legislation were enacted, Canada would be assured that all new imported vehicles whether made in Europe, Japan or the USA would conform to acceptable safety standards and as I said before assurances have been given that domestically-produced American type vehicles would also conform. However, there would be no statutory obligation in respect of domestically produced cars and Canada would be open to charges of imposing non-tariff trade barriers.

When the Hon. Gordon E. Taylor, Minister of Highways, for Alberta appeared before you on November 8th, he said that the only logical way to build a safe car is to have it built under national legislation and that it was his belief, that it was logical and reasonable for the Federal Government to set standards for a safe vehicle that are acceptable right across the nation.

The Canadian Highway Safety Council in its brief to you on November 24, also urged Federal legislation. They said that, for the sake of uniformity, efficiency and economy, these safety standards should be North American in scope and ideally the standards should be mandatory.

In view of all these considerations the Government is giving most serious study to means, whereby, in co-operation with the provinces, effective legislation in this area could be introduced which would apply to all vehicles.

We are all aware of the seriousness of the motor vehicle accident situation. It is bad now and getting worse—worse in Canada than in the United States. Yet it is not exclusively a Canadian or a North American problem, but is common to all advanced nations. Concern is increasing, not only among safety groups but also among legislators, medical groups, consumers and producers.

Much research has been done but there are problems in utilizing and co-ordinating this work. Since Canadians drive a different mixture of cars large and small, under different climatic conditions, with different training, legal restrictions, etc. there is need for Canadian studies to ensure that the research findings of others are applicable here. It seems clear to me that there is need for Federal Government involvement in the field of vehicle safety, not only to prepare and co-ordinate standards, but also to:

- (a) Serve as a central agency for the collection, analysis and dissemination of information.
- (b) Facilitate by voluntary means the co-ordination of work now being carried out by other organizations.
- (c) Find areas in which there is a need for further research and arrange for the necessary studies to be made.
- (d) Carry out research studies on its own where there is an established need and there is no other agency to undertake this work.

- (e) Act in a liaison capacity with governmental and non-governmental bodies of other countries.

I thought, Mr. Chairman, that it might be useful to bring members of the Committee up to date where the government of Canada now stands in relation to this problem in the light of a recent publication of mandatory standards in the United States. I would be glad, if members of this assembly have any questions, to try and answer them.

Mr. WOOLLIAMS: I wonder if I might just say this. It is not a question to put to Mr. Drury but there have been other witnesses before this Committee in reference to this very field, and there has been, in fact, some doubt whether the federal government could pass the kind of legislation that the United States has passed and stay within their constitutional rights. In my opinion, because of those powers delegated to the federal government and because it is something common to all Canadians, they would be within their jurisdiction to pass this legislation. It might be because of the strength of Mr. Drury's brief, and I want to congratulate him in that regard, that we could get a legal opinion—I would like to hear a legal opinion, I do not say it is always right but at least there are people who give opinions to the government—from the Department of Justice in his respect. Maybe somebody could come at some future time to give evidence in that regard.

Some people are inclined to feel that it might be a matter of property and civil rights and infringe on provincial jurisdiction. I do not think so. I am going to repeat that it is a matter which could fall under many categories that are particularly delegated to the federal government, and it is something above all, when you get into the field of jurisprudence, that is common to all Canadians and therefore I believe it is well within the ambit of federal jurisdiction. I notice that the Minister did say in his brief that one of the provincial ministers of highways, Mr. Gordon Taylor, took the same viewpoint, and I have no doubt that his department has said that. What is your feeling, in talking to constitutional people, in that regard, Mr. Drury?

Mr. DRURY: Mr. Chairman, I would hesitate to try and give off the cuff legal opinions. Perhaps as a means of ducking the question or avoiding the issue, I might point out that the Minister of Transport, in proposing the setting up of the new transport commission, did indicate that he was proposing to have a meeting with the provinces on the question of jurisdiction in relation to highway traffic. I think that this might well be a suitable occasion to discuss collectively with the provinces the best means of getting effective implementation of a national standard uniform code in relation to highway safety.

Mr. WOOLLIAMS: I do not believe in the philosophy of riding slipshod over provincial rights, but where we have a clear field, if we have that clear field and believe we have and many constitutional people believe we have that field, we could act. Because we are always concerned with the other problems, there is a tendency—and this is no criticism of you, sir, it has been going on with all governments—to pussyfoot in the situation and never crystallize it to a conclusion. I believe we have that field, and if we have the field there is no harm in certainly discussing with the provinces and not delay it. My feeling is that we should go ahead and legislate the same as they did in the United States. Why should we

depend on their standards? It is only by luck they passed the legislation to protect the lives of Canadians, and that is not my idea of nationalism.

Mr. DRURY: Well, I think probably the fact that the question is being asked indicates that the right is not as clear as you feel it is.

Mr. WOOLLIAMS: Well, I tell you I really did not ask the question. I was trying to drive home one of my opinions.

The CHAIRMAN: That you always do very effectively. Mr. Woolliams. Mr. Honey had his hand up to ask a question when the other witness was before us.

Mr. HONEY: I would like to ask Mr. Sheffe some questions; I have no questions for the Minister.

The CHAIRMAN: I see. Well, then we will hear Mr. Mather and then Mr. Guay.

Mr. MATHER: I had the same question.

The CHAIRMAN: Fine, Mr. Guay.

(Translation)

Mr. GUAY: Mr. Minister, on the 27th of May, 1966, when you came before this Committee, I had the opportunity of speaking to you about the constitutional question of highway safety and about the standards the central government would like to set up. Today, we have the guide before us. I agree with Mr. Woolliams on this and I would like to know whether the Committee Chairman intends to bring in advisers on Constitutional Law who will be able to give us a decisive opinion? We will then know where we stand. Do you think this is possible?

Mr. DRURY: Well, Mr. Chairman, it is possible to bring in experts on Constitutional Law, that is quite possible. Personally, being a lawyer myself, I think that you can have a legal opinion, but you can have as many legal opinions as there are lawyers. If the Committee wishes to undertake this task, it depends on the Chairman of the Committee, not on me.

(English)

Mr. MATHER: Mr. Chairman, I am very pleased to see the recommendation of the committee on page 2 in relation to alcohol, impaired driving, and so on. The first recommendation which I think has been referred to the provincial government concerned implied consent with regard to breathalyzer testing. My understanding of implied consent legislation is that it means simply that when a man or a woman applies for a driver's licence and receives that licence he or she implies at that time his or her consent to the taking of a breath test or a test for alcohol when required to do so. My question is, the statement says that this has been referred to the provincial governments by the central committee. Has that been recently done, and has there yet been any reaction from the provinces to that recommendation?

Mr. DRURY: Mr. Chairman, it will be recollected that this committee, a very large and imposing committee, was made up of representatives of the interested federal government departments, of the interested provincial government de-

partments, mostly departments of highways and departments of roads; the voluntary bodies such as the Good Roads Association, the Highway Safety Council, and so on, concerned with this problem and also the motor car producers. It was the virtually unanimous view of this committee which included representatives of the provincial government that the principle or doctrine of implied consent should be adopted in provincial legislation. So far, to the best of my knowledge, we have not yet received a concerted reaction to legislating in this sense.

Mr. MATHER: In relation to point 2 in this same section, the committee and the Minister favour an amendment to the Criminal Code which would make mandatory breath tests for a suspected driver.

Mr. DRURY: No. I am not so sure that this is what the recommendation was, Mr. Chairman. It was not a change in the Criminal Code to make mandatory a breathalyzer test but to make it a specific offence to drive a car when the alcoholic content of a man or woman's blood was above a certain level.

Mr. MATHER: As determined, it says here, by the breathalyzer test.

Mr. DRURY: This being the best means of determining it, or in the view of the committee, the best available means of determining this, rather than blood samples or other such things. It was not proposed by the committee that the Criminal Code should be used as the vehicle for compelling people to submit to a breathalyzer test, but merely to establish that if it was demonstrated by a breathalyzer test that the alcoholic content was above a certain level you would then be committing an offence under the Criminal Code.

Mr. MATHER: This would be rather like establishing a certain level of blood alcohol above which it would be against the law for a person to drive.

Mr. DRURY: That is correct.

Mr. MATHER: And you would accept the breathalyzer test as a method of finding that out.

Mr. DRURY: Well, in the view of the committee, at any rate, the best available method, the best technique for determining this.

The CHAIRMAN: That seems to be in accordance with the evidence we had from the Canadian Bar Association, too, does it not, Mr. Mather?

Mr. McQUAID: May I ask a supplementary question, Mr. Chairman. You mentioned, Mr. Minister, that you did not get unanimity from the provinces as to the passing of legislation in section 5. Will the federal government then give consideration to a change in the Criminal Code bringing in breathalyzers, making them legal? I am thinking possibly that you may not get unanimity as between the provinces and if you do not, it is then rather useless to put a section in the Code saying that it is an offence if the alcoholic content of the breath is over a certain per cent. Now, you would have to bring in some legislation to make effective that particular provision of the Criminal Code.

Mr. DRURY: I was going to say, Mr. Chairman, that this is really out of my field.

The CHAIRMAN: That is why I wanted to put in a few words, at any rate,

and say to Mr. McQuaid that that is one of the matters that have been referred to the committee and we will be making a report to the House; I would think it would be a little bit premature for the Minister to make a statement until the government at least have our recommendations for consideration and then make up their minds what they intend to do about them. But we definitely have a report that has already been prepared and it will be submitted in due course to the Committee for consideration along the lines of what has been referred to us on that subject.

Are there any other questions?

There are no other questions, Mr. Drury. On behalf of the committee I wish to thank you and your colleagues for this presentation.

Mr. DRURY: Mr. Chairman, I do not know when, or, indeed, if you do propose to incorporate this into the evidence. The fact that there is a written statement seems to me should make it unnecessary to come back and have it read again, unless members of the Committee who are not now present wish to ask questions—

The CHAIRMAN: If they intimate it, I shall be sorry to bring you back for that particular purpose, but it would be the intention at the first meeting we have, which will be next week, to make these statements part of our records with the approval of the Committee when there is a quorum present.

Mr. DRURY: Thank you very much, Mr. Chairman. I appreciate the opportunity.

If there are questions on this quite important and, I think, interesting subject, both I and my officials will be glad to come back at your convenience.

The CHAIRMAN: I know that you would be.

Mr. DRURY: Just let me say, parenthetically, I do share the view which was expressed earlier by the witness on behalf of the congress that one has to be very careful to see this whole traffic accident problem in perspective, and not devote so much attention to the problem of what is known as the secondary accident lest you forget entirely about the real problem of the primary accident, because obviously if you cut out the primary accident you have no secondary accident.

If we concentrate entirely on the secondary accident we are losing sight of the main cause of injury and damage and are perhaps not being as effective as we should.

The CHAIRMAN: And the problem is the sum of all the parts.

Mr. DRURY: That is correct.

The CHAIRMAN: Thank you again very much Mr. Drury.

Mr. Dodge, would you and your group mind coming up. There may be still a few things that you would like to say.

I know Mr. Honey has a question or two that he would like to ask you. This will all be on the record.

It is very bad. This is the first time we have had this happen. We just ran into an unusual number of members who were away today, and who did not know about it.

Mr. HONEY: Thank you, Mr. Chairman, I just have a few questions for Mr. Sheffe in relation to the inspection of finished automobiles in the factories. Would I be correct in categorizing the defects that appear on the highway into two broad general areas: one would be a defect that resulted from design, that became apparent later and the other would be a production defect in assembly or manufacture of one of the parts. Would this be a fair delineation of the two types?

Mr. MCGREGOR: I think production would be first and design second.

Mr. HONEY: Then on the matter of the production defects that appear, I think you indicated, Mr. Sheffe, that about three years ago all automobile manufacturers changed over from the inspection system to the quality control system.

Mr. SHEFFE: This was ten years ago, when one of the manufacturers changed over; the others followed suit, I do not know how soon after, but it was not too long after that.

Mr. HONEY: So, it is within the last ten years.

Mr. SHEFFE: That is right.

Mr. HONEY: Do you feel that there has been a deterioration in the quality control or inspection in the last year, for example, since this model year started?

Mr. SHEFFE: Obviously, from the last two years, anyway that publicity has been given to the recall of cars. We do not know how many cars were recalled over the last several years, because as I say, it was not until the last year or two that any publicity has been given to the fact that cars have been recalled in any great numbers. Another thing that makes it difficult to determine, with the mystery crashes, is that there is no way of knowing what caused the loss of control of the vehicle. In a mystery it is the one car crash, or the two car crash where there are no survivors, and there is no obvious reason for the crash. This is another area where we think that vehicles ought to be impounded by the authorities and examined to find out whether there was a true mechanical defect or mechanical defect owing to the driver's lack of maintenance. That is a very important area.

Mr. HONEY: Let me say that in the past few months—and my riding is Durham, which is adjacent to one of the automobile manufacturers in Oshawa—we have received from constituents who were employed there, a considerable degree of evidence that they are not satisfied—these would be members of your union—with the quality control process and they seem to relate it, and I ask you: do you think this would be a fair relationship, to the general atmosphere in the plant. There seems to be a feeling, rightly or wrongly, and I do not assess it, of a breakdown of relationship between management and union. Do you think there is any relationship there.

Mr. SHEFFE: I doubt that very much. I have not heard that there has been any change in the relationship. It has not been of the best at any time. I do not know whether there has been such a thing as a breakdown. I would doubt very much whether this would contribute to the problem of recalled cars.

Mr. HONEY: To me it would contribute only in the sense of employee morale in general.

Mr. SHEFFE: That is possible, but, as I say, the biggest problem here is the question of production standards. It is impossible, or virtually impossible, for an assembler to properly assemble cars on a continuing moving line. There have been instances, for instance, of wheels not falling off but coming very, very close to falling off. A tester noticed a wheel with only two nuts on it out of five, and they were only on finger tight. He got bawled out by his foreman. The foreman said to him, "you are not responsible to check the car; you are responsible to drive it". The guy refused to drive a car with a wheel that was obviously going to fall off. This foreman told him: "the control of inspection does not rest with you; all you do is drive it; make sure it holds together". The guys do not like working under those conditions.

Mr. DODGE: May I say, Mr. Honey, that the suggestion that appears to be made to you is that because of a bad union-management situation, the employees might take out their frustrations on the assembly line by not tightening up the bolts, or in other ways passing by proper inspection standards. I would hardly think that would be characteristic.

Mr. HONEY: I did not want to leave that impression. I do not think that is the situation at all, but the indication that I have is that a greater workload is placed on the employees in the recent year or two, so that they do not have the opportunity now, maybe, to do their assembly as well as they feel that they would like to in all consciousness. This is the evidence given me that recently they have had more really than they can do properly. Do you have any evidence of that?

Mr. SHEFFE: I cannot give you first class evidence. I come out of an aircraft plant, not an automobile plant, but in speaking to the assemblers and in speaking to the local union officials I find this is the problem. As a matter of fact, in the last round of negotiations in 1964, one of the major obstacles to an early agreement was the question of the union having some control of production standards. We have made submissions to the provincial governments, for instance, to give us the right to strike on production standards, as they have in the United States; and there have been strikes in the United States on the question of production standards, where they will crank the assembly line up and it will start going faster, to the point where there is only one way a guy can assemble the car; that is, to do the best he can. If he misses a wheel or misses a couple of nuts, well hopefully it will get caught somewhere further down the line. But obviously they can not do a proper job if he is standing there and that line is moving. He is given just so long. A utility man has to step in before he can step out of his position. If he has to answer a call of nature and the utility man is not immediately available, he is going to be under some pressure and his productive capacity is not going to be as good as it was if he was working under normal conditions. That line does not stop; it keeps moving and sometime they miss a few nuts, miss a few parts.

Mr. HONEY: I think this is very important evidence, Mr. Chairman. Mr. Sheffe has, I think, opened up an area that this Committee, I respectfully submit should explore. I would like to ask Mr. Sheffe, if the Committee was so inclined and if I make the submission to the Chairman and the committee agrees, would

the officers of the UAW be prepared to have members of your locals who have had these experiences, come before this Committee?

Mr. SHEFFE: I cannot speak for the Canadian director, but I will certainly discuss it with him. I have to go to Detroit tonight. Although I live in Ottawa I am doing some work in Detroit for the next two weeks. I will certainly discuss it with him. I know the boys will be anxious to come, but I cannot speak for the Canadian director.

Mr. HONEY: Maybe before you discuss this I would like to make a suggestion to the Chairman and he may feel that he would have to have a quorum or a steering committee meeting. I would like to make that suggestion to you, Mr. Chairman, that we should hear the best evidence, that is, the direct evidence from the employees on this point which I think is an important one.

The CHAIRMAN: Well, how would it be if we ask Mr. Sheffe to inquire and find out if they are willing to come and would like to come. You could pass that information back as quickly as you can and then the steering committee can deal with it. We did invite the UAW to appear before us in Windsor. Maybe they felt that with the motor vehicle manufacturers appearing we were fully employed. Therefore, they did not indicate whether they want to appear at that time or not.

Mr. SHEFFE: Sir, I think the local union would like to appear. They are very much concerned about this problem.

The CHAIRMAN: We will leave it up to you to make the inquiries. We may follow it up ourselves in order to get the information quicker. Can you send it back to Ottawa quickly? How long will you be there?

Mr. SHEFFE: I will be there until February 20. As soon as I get back I will contact Mr. Burt, our Canadian director—

Mr. HONEY: Mr. Chairman, could you try and secure a representative selection of employees of unions maybe from three major manufacturers in Canada so we could cover the three or maybe, four Companies, if we wanted to. My colleague has suggested that probably one or two of these witnesses would be people who are specifically—if I am correct—charged with the responsibility of inspection now, under the set-up.

Mr. SHEFFE: If that is possible certainly we will.

The CHAIRMAN: We are hoping to get witnesses to appear before this committee who have practical experience on the production line.

Mr. Dodge, Mr. McGregor, Mr. Sheffe and Mr. Jacks, we want to thank you very much for your appearance here today. We express our apologies for the fact that we did not have a full Committee, a full quorum. I also must apologize for the fact that we introduced the Minister in the middle of your presentation. That was something which we had not anticipated when we arranged for this particular meeting. We do wish to thank you all most sincerely and we do apologize for any inconvenience that we may have caused you. If there is anything you feel that you wanted to say that you have not had an opportunity of saying maybe you could take a few minutes or so to say what those things are.

Exhibits

No.

4. "Breath Tests for Alcohol" by H. Ward Smith, Ph.D., and D. M. Lucas M.Sc.
 5. "The Development of a Large Scale Breath Testing Programme in Ontario." by H. Ward Smith, Ph.D., and D. M. Lucas, M.Sc.
 6. "Use of the Breathalyzer in Ontario—1965" by R. Hallett, M.Sc.
 7. "Alcohol Detector Tube of R. F. Borkenstein" by R. Hallett, M.Sc.
 8. Drinking and Driving.
 9. The Drinking Driver, Report of a Special Committee of The British Medical Association, 1965.
 10. "The Roles of Carbon Monoxide, Alcohol and Drugs in Fatal Single Car Accidents; Alcohol, Drug and Organic Factor Study", by the Department of California Highway Patrol.
 11. Alcotest apparatus with accompanying brochure.
 12. 1964-5 Report of the Minister, Ontario Department of Transport.
 13. "Accident Facts, 1965", Statistics relating to motor vehicle traffic accidents, Ontario Department of Transport.
 14. "Methods of Forensic Science", Volume IV by Dr. H. Ward Smith.
 15. Letter from Mr. C. E. Laybourn, Director of Traffic Safety, Ontario Department of Transport to Mr. P. J. Farmer, Canadian Highway Safety Council.
 16. Fatal Motor Vehicle Traffic Accidents on the Kings Highways Only—May, 1966, by the Planning Board, Traffic & Planning Studies Section, Ontario Department of Highways.
 27. "Proposals for detecting impairment of skill caused by intoxication sleep deprivation and similar influences", prepared by Dr. C. B. Gibbs of the National Research Council and classified as confidential.
 31. N.R.C. Technical Note No. 3, Motor Vehicle Safety—The Driver Alcoholically Impaired.
 33. Letter of January 10, 1967, from Mr. R. A. Bartlett, Registrar of Motor Vehicles, Government of Newfoundland and Labrador to Mr. A. J. F. Cameron, Chairman of the Justice and Legal Affairs Committee communicating a resolution passed at a public conference on Highway Safety in that province.
- Bill C-118, An Act to Amend the Criminal Code (Negligence in Operation of Motor Vehicle).

Witnesses

Mr. Yves Forest, M.P.

Proceedings No. Page Nos.

1

9-22

Exhibits

No.

34. Letter of May 19, 1966, from Mr. F. E. Sloane, Superintendent of Traffic and Deputy Chief Constable, City of Edmonton to Mr. John E. Harcourt, Deputy Attorney General, Province of Alberta.

Letter of June 2, 1966, from Mr. William Henkel, Solicitor to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.

Letter of May 20, 1966, from Mr. R. M. Anthony, Solicitor, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.

Letter of May 20, 1966, from Mr. J. H. Carpenter, Chief of Police, Lethbridge, Alberta, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.

Letter of June 28, 1966, from Mr. R. W. Bonner, Attorney General, British Columbia, to the Clerk of the Committee.

Letter of May 31, 1966, from Mr. Gordon S. Gale, Solicitor, Department of the Attorney General, Nova Scotia, to the Clerk of the Committee.

Letter of May 20, 1966, from Mr. Darrel V. Heald, Attorney General, Saskatchewan, to the Clerk of the Committee.

PRIVATE MEMBERS' NOTICE OF MOTION No. 32—Mr. Basford.

Proceedings

<i>Witnesses</i>	<i>No.</i>	<i>Page Nos.</i>
Mr. Maurice Arless	24	841-879
Mr. J. R. Baldwin	23	797-813
Mr. Ron Basford, M.P.	13	457-473
Mr. James Barrett	24	841-879
Mr. Gordon Blair	24	841-879
Mr. Eugene R. Brady	24	841-879
Canadian Airline Pilots Association	23	813-838
Mr. George Finlayson	24	841-879
Captain P. C. Hamilton	23	813-838
Mercury Travelsurance Agencies	24	841-879
Mutual of Omaha Insurance Co.	24	841-879
Mr. H. L. Rogers	24	841-879
Captain W. J. Rodgers	23	813-838
Department of Transport	23	797-813
Mr. A. J. Watson	23	797-813
Mr. Eric Winsor	23	797-813

Proceedings

<i>Appendices</i>	<i>No.</i>	<i>Page Nos.</i>
15. Passenger fatality Rates 1945-65	23	837
16. Resolution of International Federation of Air Line Pilots Association	23	838
17. Brief of Mercury International Travelsurance Agencies Ltd.	24	870
18. Brief of Mutual of Omaha and Tele-Trip Inc. ..	24	874

Exhibits

No.

21. "The Relationship between Airline Sabotage and Air Trip Insurance", Civil Aviation Branch, Department of Transport.
22. "Insurance Concession at Departmental Airports" (prepared by The Department of Transport).
23. DOT Accident Report of the Douglas DC 6 B, CF-CUQ at 100 Mile House, B.C., on July 8, 1965.
24. DOT Accident Report of the Douglas DC/3, CF-CUA, near Quebec, P.Q., on September 9, 1949.
25. Mutual of Omaha specimen policies for vending machines pertaining to air trip insurance.
26. Letter from Mr. Grant to the Minister of Justice dated October 7, 1966, letter to Mr. Grant from the Director, Airports and Field Operations, Department of Transport, dated October 31, 1966; letter from the Department of Justice to Grant dated October 13, 1966; letter from Grant to the Department of Justice dated December 5, 1966, letter from the Department of Justice to Timothy D. Ray, Clerk of the Committee, dated December 12, 1966.
29. Letter of October 26, 1965, from Mr. Richard Humphrey, Superintendent of Insurance to Mr. R. Goodwin, Director, Civil Aviation, Department of Transport;
Letter of August 20, 1965, from Mr. Gordon H. Stewart, President, Canadian Air Line Dispatchers Association, to the Honourable J. W. Pickersgill;
Letter of August 4, 1965, from Mr. Alastair R. Paterson of Manning, etc. to Captain J. H. Foy, President, Canadian Airline Pilots' Association;
Letter of August 3, 1965, from Mr. F. A. Walton, Executive Vice-President for Canada, Mutual of Omaha Insurance Company to Mr. R. W. Goodwin, Director of Civil Aviation, Department of Transport;
Letter of July 26, 1965, from Mr. C. B. Archibald of C. B. Archibald Ltd., Engineering Consultants, to Mr. Jack Davis, M.P.;
Letter of July 20, 1965, from Mr. R. H. Barron, Barrister and Solicitor to the Honourable J. W. Pickersgill;
Letter of June 21, 1965, from Captain W. J. Rodgers, of C.A.L.P.A., to Mr. R. W. Goodwin, Director, Civil Aviation, Department of Transport;
Letter of October 22, 1958, from Miss Marjorie MacLaughlin to The Superintendent of Insurance;
U.S. Report of Government-Industry Steering Committee on Airline Sabotage, and Report of Subcommittee on Relationship of Insurance to Airline Sabotage of March, 1963.
Details of Concession Fees from Airtrip Insurance Fiscal Years April 1 1960 to March 31, 1965 prepared by the Air Services, Department of Transport.
Letter of January 27, 1967, from Montreal Board of Trade to Mr. A. J. P. Cameron.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

Copies and complete sets are available to the public by subscription to the Queen's Printer. Cost varies according to Committees.

Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966-67

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

No. 27

MINUTES OF PROCEEDINGS — FEBRUARY 22, 1967

Respecting the subject-matter of

Bill C-105, An Act to Amend the Criminal Code (Insanity)

Bill C-176, An Act to Amend the Criminal Code (Insanity at Time of Trial)

MINUTES OF PROCEEDINGS AND EVIDENCE
MARCH 1, 1967

Respecting the subject-matter of

Bill C-26, An Act to Amend the Criminal Code (Safety Devices for Automotive Vehicles)

Bill C-49, An Act to Amend the Criminal Code (Dangerous Motor Vehicles), and

Private Members Notices of Motion Nos. 26, 31 and 38.

INCLUDING

Seventh and Eighth Reports to the House.

Index to the Minutes of Proceedings and Evidence relating to Bills C-105, and C-176.

WITNESSES:

from the United Automotive Workers Union: Mr. Larry Sheffe, International Representative; Mr. Charles Brooks; Mr. James Milne; Mr. Don Read; and Mr. Michael Heas.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,	Mr. Guay,	Mr. Otto,
Mr. Aiken,	Mr. Honey,	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Tolmie,
Mr. Fulton,	Mr. Mather,	Mr. Wahn,
Mr. Gilbert,	Mr. McQuaid,	Mr. Whelan,
Mr. Goyer,	Mr. Nielsen,	Mr. Woolliams—24.
Mr. Grafftey,		

(Quorum 10)

¹ Replaced Mr. Reid Scott, Feb. 22, 1967.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, February 22, 1967.

Ordered,—That the name of Mr. Gilbert be substituted for that of Mr. Scott (Danforth) on the Standing Committee on Justice and Legal Affairs.

THURSDAY, February 23, 1967.

Ordered,—That the subject-matter of Bill C-192, An Act to amend the Criminal Code (Destruction of Criminal Records), be referred to the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

REPORTS TO THE HOUSE

FEBRUARY 28, 1967.

SEVENTH REPORT

Complying with an order of the House of Commons of May 30, 1966, your Committee has considered the subject-matter of Bill C-176, An Act to amend the Criminal Code (Insanity at time of trial).

The purport of the Bill is to allow the issue of whether an accused is, or is not, on account of insanity capable of conducting his defence to be postponed by the Court, Judge or Magistrate until any time up to the opening of the defence. It further provides that if before the question of the accused's fitness to stand trial fails to be determined the Jury, Judge or Magistrate returns a verdict of acquittal on the count or counts on which the accused is being tried the issue shall not be determined.

The Bill follows the lines of Section 4 of the Criminal Procedure (Insanity) Act, 1964 of the United Kingdom allowing such issue to be postponed until any time up to the opening of the case for the defence. The proposed Bill goes somewhat further in that it provides that the Court, Judge or Magistrate may at the request of counsel for the accused, and at the discretion of the Court, Judge or Magistrate if he deems it to be in the interest of the accused, call any witness on the issue of the identification of the accused as the party responsible for the crime and on the issue of whether the accused could have been present at the scene of the crime at the time of the commission thereof without the defence being deemed to have been opened within the meaning of the amendment.

Your Committee has had the advantage of hearing from distinguished witnesses, namely:

The Honourable J. C. McRuer, retired Chief Justice of the High Court Division of the Supreme Court of Ontario;

Mr. John Munro, M.P., sponsor of the Bill;

Mr. Barry Swadron, Director, Study Project on Mental Health Legislation;

Dr. M. Boyd, Superintendent, Ontario Mental Hospital at Penetanguishene;

Mr. Gowan T. Guest, National President, and Dr. J. D. Griffith, General Director, The Canadian Mental Health Association and who also represented the Canadian Association for Retarded Children.

A letter from the Attorney General of Ontario approving of the principle of the Bill also forms part of the record.

It is to be noted that the word "Insanity" as used in the proposed amendment covers a much broader field than the cases where an accused may be found not guilty on the ground of insanity. A better word might be "disability" because

it includes persons not only suffering from mental illness but also mental retardation and other defects caused by disease or damage to the brain resulting in a lower mental capacity.

The practice in Canada is to resolve the fitness question as soon as the court is satisfied that the matter is placed in doubt. This by custom and practice has meant that the special issue is determined as a preliminary one at the outset of the trial. Where the accused is found unfit to stand trial under such circumstances not only is there no opportunity to present defence but the prosecution has not had to test its case. The main issue at trial—innocence or guilt—is left completely untouched. Detention for an indeterminate time, perhaps for life, follows as a matter of law. While we do not knowingly convict a person who, due to mental disorder, is handicapped in answering a criminal charge, neither are we acquitting him. The possibility of his innocence cannot be excluded. Indeed, his innocence is presumed.

The witnesses, or some of them at least, went beyond the sponsor's proposals and felt that the issue as to fitness to stand trial could be and should be in some cases postponed until after the evidence for both the Crown and the accused had been heard, and the Committee concurs.

The Committee was much impressed with the suggestion made by Mr. McRuer that provision be made in the Bill or elsewhere in the Criminal Code providing for the appointment of a guardian *ad litem* on behalf of the accused. This would enable the guardian *ad litem* to instruct counsel regarding the trial and the necessary decisions to be made in order to properly safeguard the interest of the accused.

After hearing the distinguished panel of witnesses above referred to and the other evidence made available, your Committee agrees with the soundness of the principle enunciated in Bill C-176, and recommends that it be carried into law at once.

A copy of the relevant Minutes of Proceedings and Evidence (Issues Nos. 9, 12, 25) is appended.

Respectfully submitted,
A. J. P. CAMERON,
Chairman

FEBRUARY 28, 1967.

EIGHTH REPORT

Your Committee had referred to it the subject matter of Bill C-105, An Act to amend the Criminal Code (Insanity), sponsored by Mr. Brewin. In considering the proposed legislation your Committee held two formal meetings on November 9th, 1966 and January 31st, 1967. The following witnesses were heard: Mr. Andrew Brewin, M.P.; Professor Stuart Ryan; Professor Stanley Beck and the Honourable J. C. McRuer.

The following were printed as appendices to the Minutes of Proceedings and Evidence:

Criminal Insanity (From M'Naghten to Durham) prepared by the Research Branch, Library of Parliament;

Mental Abnormality and the Criminal Law by Professor Stuart Ryan;
Alternatives to the M'Naghten Rules by Professor Stanley Beck.

The following were made exhibits to the proceedings:

Extract from Mental Disability and the Criminal Law pp. 330-372.

Extract from Canadian Psychiatric Association Journal, June, 1964.

Copy of the report in United States of America v. Freeman, United States Court of Appeals—Second Circuit, Federal Reporter 2nd Series, Vol. 357, pp. 606-629.

Report of the Royal Commission on the Law of Insanity as a Defence in Criminal Cases—October 25, 1956.

Your Committee was satisfied that some technical improvements could be made in the present definition of insanity under section 16 of the Criminal Code, to define the circumstances under which a person should not be held responsible for his acts.

Your Committee could find, however, no substantial agreement among medical and legal authorities as to the wording of a new or better definition. In recent years, several jurisdictions have grappled with the problem, but technical knowledge has still not become sufficiently firm to result in a consensus. Neither the so-called "Durham test" as incorporated into the proposed bill nor the American Law Institute definition have had sufficient time or body of precedent to confirm or deny their validity.

Your Committee believes that the body of law built up by precedent on the present definitions in the Criminal Code should not be disturbed unless a clear case for reform in fact, as well as in legal process is shown. Juries are not likely to be affected greatly by refinements in definition. Such a clear case was not exhibited to the Committee.

Your Committee was impressed with the suggestion that the words "disorder of the mind" should replace "disease of the mind" in subsection (2) of section 16 of the Criminal Code to avoid the suggestion that some organic change or break-down should be exhibited.

Your Committee does not therefore commend the principle of this Bill to the House and the Government.

A copy of the relevant Minutes of Proceedings and Evidence (Issues Nos. 19 and 25) is appended.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, February 21, 1967.

(32)

The Standing Committee on Justice and Legal Affairs having been duly called to meet this day at 11.00 a.m., the following members were present: Messrs. Aiken, Cameron (*High Park*), Cantin, Goyer, Guay, Mather, Ryan, Tolmie, Wahn (9).

In attendance: From the Department of Justice, Mr. D. S. Thorson, Associate Deputy Minister.

At 11.40 a.m. there being no quorum, the Chairman, Mr. Cameron (*High Park*) postponed the meeting to the call of the Chair.

WEDNESDAY, February 22, 1967.

(33)

The Standing Committee on Justice and Legal Affairs met *in camera* this day at 1.40 p.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Rafferty, Guay, Honey, Mather, McQuaid, Tolmie, Wahn (11).

On motion of Mr. Wahn, seconded by Mr. Honey,

Resolved,—That reasonable living and travelling expenses be paid to the honourable J. C. McRuer who appeared before the Committee January 31, 1967.

On motion of Mr. Forest, seconded by Mr. McQuaid,

Resolved,—That documents supplied by the Canadian Government Specifications Board showing comparative auto safety legislation provincially, and in England, France, Germany, Italy and Japan, be made an exhibit (*see exhibit 38*).

On motion of Mr. Tolmie, seconded by Mr. Cantin,

Resolved,—That a letter and documents from Dr. William Haddon, Administrator, Traffic Safety Agency, U.S. Department of Commerce, including The Initial Federal Motor Vehicle Safety Standards, dated February 1, 1967, to Mr. Timothy D. Ray, Clerk of the Committee, be made an exhibit (*see exhibit 39*).

The Chairman presented for the Committee's consideration the draft reports of the House relating to the subject matter consideration of Bills C-176, An Act to Amend the Criminal Code (Insanity at time of Trial) and C-105, An Act to Amend the Criminal Code (Insanity).

Following discussion, the reports were discussed.

Agreed,—That the Chairman present the Seventh and Eighth Reports to the House (for text, see Reports to the House)

At 2.15 p.m., the meeting adjourned to the call of the Chair.

WEDNESDAY, March 1, 1967.

(34)

The Standing Committee on Justice and Legal Affairs met this day at 1:10 p.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Goyer, Honey, Mather, McQuaid, Otto, Tolmie, Wahn, Whelan (11).

In attendance: From the United Automobile Workers Union: Mr. Larry Sheffe, International Representative; From Local 707, Ford, Oakville: Mr. Michael Heas, Quality Control Inspector, and Mr. James Milne, Paint Repair Man and Production Standards Committeeman; From Local 222, General Motors, Oshawa: Mr. Hugh Armstrong, Reject Repairman; Mr. Bob Tremble, Heavy Reject Mechanic; Mr. Don Read, Light Reject Repairman, Committeeman; Mr. Ron MacDuff, Final Finish Inspector; Mr. Eric Downer, Reject Inspector; From Local 444, Chrysler, Windsor: Mr. Charles Brooks, President, Local Union; Mr. Vic Baillargeon, Committeeman; Mr. Frank Lasorda, Shop Steward; From Local 200, Ford, Windsor: Mr. Henry Renaud, President, Local Union.

The Chairman invited Mr. Sheffe to introduce the various witnesses accompanying him. He then made a brief statement. Following this, Messrs. Brooks, Heas, Milne, and Read each made brief statements based on their respective submissions.

Agreed,—That the brief of Mr. James Milne, the brief of Mr. Don Reid, and the brief of Mr. Michael Heas be appended to today's proceedings (*See Appendices 20, 21 and 22*)

Following their statements, the witnesses were questioned by the Committee.

Agreed,—That the following be filed as exhibits: copies of Grievance No. 3-31108 at Chrysler Corp. of Canada Ltd (*See Exhibit 40*); Inspection defect cards O. Assy, 7474-1, Nov. 66 (*See Exhibit 41*), Inspection check list, 169128 and 166998 (*See Exhibit 42*); New Vehicle Starting Procedure, dated October 12, 1965, and December 6, 1965, issued by A. A. McKenzie, Industrial Relations Manager, Ford, Oakville (*See Exhibit 43*); Report, dated November 1, 1966, signed by Mr. J. L. Coissie relating an inspection incident (*See Exhibit 44*); and the brief of Local 444, presented by Mr. Charles Brooks, President, Local Union (*See Exhibit 45*).

At the conclusion of the questioning, the Chairman thanked the various officials from the UAW for their valuable evidence.

At 2:30 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

WEDNESDAY, March 1, 1967.

1.10 p.m.

The CHAIRMAN: Gentlemen, we have a quorum, and on account of the somewhat unusual hour that we are meeting for hearing witnesses, I am not going to make too much of a ceremony out of it. I would ask Mr. Sheffe to introduce the gentlemen who will be speaking and ask them to stand up so that we may know who they are.

Mr. LARRY SHEFFE (*United Automobile Workers International*): Yes, I will. I am Larry Sheffe, United Automobile Workers International representative dealing with legislation, health and safety for the Canadian region of the UAW. I will ask each one of our delegates to stand up and identify himself, his local union, and his position as I introduce him: Mr. Charles Brooks, Local 444, Windsor, Ontario, president of the local union representing Chrysler employees, 10,000 members; Mr. Vic Baillargeon, Chrysler Corporation, Local 444, Committeeman; Mr. Frank Lasorda, steward for Chrysler Corporation, Local 444; Mr. Michael Heas, Local 707, Ford, Oakville, executive officer of the local and quality control inspector on the line at Ford; Bob Tremble, General Motors, Local 222, Oshawa, secretary to the local education committee and government approved licensed mechanic; Eric Downer, local 222, Oshawa, General Motors quality control inspector; Don Read, local 222, committeeman and light reject repairman; High Armstrong, local 222, Oshawa, executive board member, trim and hardware repairman at the plant; Ron MacDuff, local 222, Oshawa, final finish inspector; James Milne, local 707, Ford Company, Oakville, paint repairman and production standards committeeman for the local; Henry Renaud, president, local 200, Ford workers, Windsor.

Mr. Chairman, I do not have the briefs. There are two or three briefs here that some of these gentlemen will be referring to. I would like to make some preliminary remarks first, if I may.

The CHAIRMAN: Yes, that will be fine, but so far as the briefs are concerned after you have made your comments from them and we are ready to adjourn we will have them made appendices so that they will appear in full in today's proceedings.

Mr. SHEFFE: First, Mr. Chairman and gentlemen, I would like to thank your Committee for giving us the opportunity to appear here. I want to apologize for the fact that we were not able to get our briefs in to the Committee earlier than his hearing today, and also I want to apologize for not having French copies of the brief. We had very short notice and it was not possible to gather all the material and prepare these briefs.

I just want briefly to go over to set the tone of our presentation, some of the items that I testified to when I appeared with the Canadian Labour Congress delegation. Some of these points the gentlemen from the various plants will be referring to.

1. The inspection system in the industry is under the direction of the production control records people who are mainly responsible for getting the product out the door.

2. Production standards are set at such a pace that it is almost impossible for an assembler to do a proper job of assembling the car.

3. There have been incidents of steering wheels coming off in the tester's hands when he drove the car around the test track; wheels coming loose or wobbling and other defects, some of which were picked up at the factory and others reported by customers to dealers where faulty installation was responsible.

4. We recommended that in major accidents, where the cause could not be readily established, cars should be impounded by the authorities and checked for mechanical failure. It is our belief that a number of accidents are caused by one of the systems failing as a result of improper assembly or other manufacturing faults.

5. We recommended certain driving aids, such as improved steering systems, dual braking systems, improved rear and side view mirrors, clearer vision through rear window, elimination of the rear window shelf which is a repository for articles which become lethal weapons on sudden stop or impact, rear window defrosters, standard pressure for tires for all types of loads, safety rims to control the vehicle in the event of a sudden blow-out and so on.

Finally, and the core of our presentation to the Canadian Labour Congress and here today, we recommend that federal inspectors be placed in auto plants to oversee the inspection procedures and work standards to ensure safety such as is required in aircraft, railway and shipping operations.

Mr. Chairman and gentlemen, I would like to say that this delegation is here representing four plants of three of the manufacturers in the industry. We are not here today to belabour any one particular company. The evidence which will be presented here is common to all plants in the industry and all companies of the industry. We are not here to do a hatchet job on the companies. We have a concern for the fact that the products coming out of these plants are not as safe as they should be and that the procedures and the controls for inspection and work standards are not as safe as they should be.

We are concerned because, as a major partner in collective agreements with the industry, we have a responsibility to the public, just as the manufacturer does. We are concerned with the fact that the products our people put out are not as safe as they should be. We also have a vested interest in this, not only from the safety angle, but because, with this scare of the safety crusade that is going on in the industry now, there has been a decline in the market. Our people are the direct sufferers as a result of this. We are concerned basically with the fact that the public are not getting as safe a car as they could get if there were proper inspection and work standard procedures.

I would like to ask Mr. Charles Brooks, the president of the Chrysler local to make a few comments from a brief which he has prepared and then then

are two other gentlemen who would like to put forth some remarks. After this, we would be glad to answer any questions.

Mr. CHARLES BROOKS (*President, Local 444, United Automobile Workers*): Mr. Chairman and members of the Committee, I appreciate this opportunity of coming before you. As Mr. Sheffe has already said, we had short notice; otherwise, we would have prepared a document that we could have supplied to every member of the Committee, but I have given to the Chairman three copies of exhibits that do contain documentary evidence, which we feel will support the contentions concerning practices that are being carried on in the industry today, particularly with regard to inspection.

I will read parts of this to you.

Approximately 10 years ago the Auto Industry discontinued the "Constant Inspection System" in the manufacture of cars and went to a Quality Control system whereby one out of a hundred, more or less, get a check-up. At least 50 per cent of the inspectors employed on such jobs were eliminated. Coincidental with this change was the increase in the rate of fatalities in cases of accidents. Many defects were found and corrected under the old system. It was not uncommon for a steering wheel to come off in a tester's hands.

This system likewise is used by vendors making the component parts for the industry and the parent firm has little or no control over the inspection although they do "spot check" on some material received.

Previously the companies had the inspection depts. separate from the manufacturing depts. so that each would be responsible for their particular function. The corporations took the Inspection Depts. and placed them under the same supervision whose main interest was to establish production records. This is tantamount to a doctor conducting his own autopsy on an unsuccessful patient. It is here that many sins are committed against safety as all a supervisor has to do is "write-off" a defect shown on an inspector's card in order to get the car shipped. The unions have complained bitterly against this unsafe practice, however, the longer car warranties were partially established to allow such practices and have the dealers correct such defects should the customer find the same (provided he survives the accident).

During the war and at the present time the various levels of government when they order a car or truck they do send in their own inspector who follows that vehicle from the beginning to its completion. This inspector does not however have the advantage of checking the component parts made by vendors. In Canada this is the greatest percentage of the car and it is in these parts that most defects are found. For instance, wheels have been found to be pressed together in manufacture but never completed by welding as specified. These cars were assembled and ready for shipping when the workmen discovered the wheels were falling apart, and not known is how many of them that may have gone out of the plant.

It would be well for the government committee to hold hearings with various unions in the total industry, as it is here that you will learn that while corporations may set good safety specifications, there is no assurance that such specifications are carried out. Only an independent inspector such as a federal inspector would enforce the proper building. Cars are not like donuts that can be checked properly on a hit and miss basis.

The following is an elemental breakdown supplied to the union for the purpose of describing a job that is in dispute over a time study on the job; a work standard sheet. It is enclosed in the brief, Mr. Chairman, and unfortunately I do not have enough copies.

Prior to this type of inspection system which presently gets 4.328 minutes per job, one inspector spent over twenty minutes actually taking the car out on a road test for the same inspection. Obviously there is little or no time under the present program to properly spend on the safety items required at the rate of 4 minutes per job.

It is in this area that, faulty brakes are uncovered, defective wheels have fallen apart, steering wheels have come off in the tester's hands. Steering mechanisms are defective. It should be pointed out that also in this area at a similar rate of production there were fifteen to twenty final inspectors prior to the new quality control system.

At the same time as the thorough front end inspection system was in effect and the fifteen inspectors were employed the entire fabrication of the vehicle was also under a constant supervision by independent inspectors, employed by the Company but under different management.

Under today's program where only four inspectors check all the cars going through final inspection instead of the fifteen to twenty that did the job before likewise at the present time the entire inspection force throughout fabrication has been cut in half and placed under the same management as those responsible for production.

As a result of this type of management operation, a supervisor can and does assume the responsibility for "writing off" or "pencilling out" an inspector's report card showing a defect and allowing the car to be shipped without the repair in order to meet a shipping schedule or obtaining his required production target for that shift.

This has resulted in bitter protests.

On the other hand when another Company buys a fleet of cars or trucks such as Bell Telephone Co. or the Canadian Government orders a fleet they do send in their own independent inspectors. This same treatment is not given to endless thousands of vehicles sold to the public. A customer, however, if he chooses to have his car given a road test and a complete check-up, wheel alignment and so on, must pay an additional \$40 to \$80 for a complete inspection of his car at the plant, but only if he orders it through the dealer. Otherwise, he gets a run-of-the-mill car that comes off the line and 4.328 minutes are spent on the final inspection of that car.

In our brief we have enclosed a description of the final inspection of a vehicle that comes down an assembly line at 47 jobs per hour. One inspector placed in the pit; he checks every car that goes over his head. He has over 20 major items to check—and I have listed them here—which may be verified with the corporation. He spends approximately 1½ minutes on each car as it goes over. We know that he cannot possibly get them all, but what does happen is that when a certain item is discovered defective, such as a pitman arm on the steering mechanism, then the inspector concentrates on that item until some other item shows up. So at the very best of this type of inspection, one can say

hat many of the defects under the cars which we will show you that do come back are missed at this particular area.

There were two men on this job at one time at 35 jobs an hour; there is now me at 47 jobs an hour under the present system.

The following is a demerit report, not normally supplied to the Union, however, hundreds of others could be obtained from the Corporation. It does underscore a major safety hazard in fabrication. As a model starts up a normal employee becomes accustomed to his job and becomes proficient, however, during the life of a model when high speed production is attained, men are put on jobs at this fast rate and expected to keep up, usually with very short break-in periods. This is accentuated when a layoff occurs in a plant whereby employees replace or bump employees from their jobs in other departments, or someone is off sick or just takes another man's place. He steps in at that line of jobs.

Enclosed is a letter a foreman's report—made to his supervisor and it is submitted for documentary evidence, but it illustrates the point. We suggest that many of these reports are on file and can be obtained. It is put in by a foreman by the name of Mr. L. Mallott, and it reads:

New Operator R. Henshel on this job with 1 day break-in. This man is not in to-day. On this job a man should have 3 days break-in. No man to put with R. Henshel for longer than a day.

This concerned incomplete braze fill. This chap was on a welding job, fabricating the body and, naturally, he would not have the experience or the skill to take over the job. We have merely illustrated this to show that this gets painted and that is the end of it until someone's car gets into a collision.

Foremen write-off repairs, the car is shipped and the defect may never be shown. If the Committee wishes to question the other in-plant representatives, they could perhaps give you a more comprehensive description of how this is done. For various reasons a supervisor will overrule the inspector unbeknownst to anyone and cause the car to be shipped and put into the hands of the public.

Mr. Chairman, I would now like to file a copy of an official grievance, one of many which have been filed from time to time by the employees concerned, protesting the type of write-off where the inspector has found defects—and some of them very serious—but where, in order to meet a shipping date—here is a flat car waiting for certain cars to be put on it to go to various parts of the country—even if that car is not ready, it goes. What happens to it after that, only the statistics can give us some accounting of it.

I would like to file this with you as evidence, because I am sure—

The CHAIRMAN: Is it agreed that this be filed as Exhibit 1 to today's proceedings?

Some hon. MEMBERS: Agreed.

Mr. BROOKS: Listed then for your verification are the sales order numbers on certain vehicles, and I am sure you can check these out if the Committee so desires.

The CHAIRMAN: Is it agreed that this submission of UAW/Local 444 by Mr. Brooks be an exhibit to today's proceedings?

Some hon. MEMBERS: Agreed.

Mr. BROOKS: I would like to conclude because I think now comes the proof of the pudding, so to speak, and enclosed also in this brief is a field service report. I can only say that we would come by them vicariously. A janitor probably found them in a waste basket; however, it is a document. Other copies may be obtained from the corporations. This is the factual listing of cars from Vancouver to Newfoundland that have been returned to the dealers with defects found, many of which could have been found in our plants. I have illustrated or numbered certain of them which I am sure your Committee would be interested in, supporting the contention of the workers in the plant and the union that what is needed in there is an inspector who we may appeal to when there are abusive practices.

In one particular instance all wheel bearings had to be changed; many spindles are without cotter keys; many nuts and bolts that are put on very vital parts are cross threaded and come off. Therefore, we submit to your Committee, with all due respect, our immediate problem; you might say the union is interested in maintaining jobs and we are. But we think also that we are more concerned with the vital interest of the public, because we also drive the same vehicles.

The CHAIRMAN: Thank you, Mr. Brooks.

Mr. SHEFFE: Mr. Heas, could you comment briefly on some of the highlights of your brief?

Mr. MICHAEL HEAS (*Local 707, United Automobile Workers*): Mr. Chairman, I will comment as briefly as I can. I am not a parliamentarian and I work in a plant. I composed this brief and I will make it as brief as possible, so to speak.

As I mentioned before, my name is Michael Heas and I am an hourly rate worker at the Ford plant in Oakville; I am attached to the quality control department and have been for 14 years. I would like to relate to you the general situation as it exists between the quality control department and the production department at the Oakville operations, and give you a rundown on the history of events surrounding a safety grievance submitted by me to the company some months ago. I will read the first part of it about the relationship in whole, and the rest of it I will just abbreviate because it gets a bit tedious, and you have the whole thing in the brief anyhow. When I have finished, there are a couple of items of evidence that I would like to submit to the Committee. I will be referring to these in the brief, so you will know what they are when I come to them.

THE INEFFECTIVENESS OF THE QUALITY CONTROL DEPT. IN CONTROLLING SAFETY STANDARDS AT FORD OAKVILLE

It is normal in manufacturing plants for Quality Control personnel to be under pressure to accept inferior quality. However, recently at the Ford Oakville Plant pressure has become so acute that even basic safety standards are being sacrificed on the altar of increased production.

Where once we used our judgment in rating a vehicle's general quality and our foremen were willing to back us up in areas of dispute; we now merely monotonously audit items on a swiftly moving line to an amount and degree which Production Management finds acceptable to write. The Assembly Line Inspectors have become as automatons, and our supervisory staff merely non-decision making 'errand-boys' for Production Management. Whenever an Inspector decides to stop "Ok'ing junk", he is stood over by a supervisor, who will either order him to accept it or will sign the unit out over his head, and I have evidence to support this.

Mr. SHEFFE: If I might interrupt, that term "okaying junk" is part of the industry jargon. I just wanted to make that clear.

Mr. HEAS: Later on in the brief, the labour relations manager himself used this term.

From this humbling of the Quality Control Department at Oakville has developed a resultant attitude of "what's the use" among the Inspectors and their foremen. It has now become generally accepted the only way to survive on the job is to co-operate with this prostitution of the Quality Control idea: to be like the three little monkeys who hear no evil, speak no evil and above all see no evil; while at the same time keeping an ear to the ground for any political change within the plant hierarchy which might indicate a possible loosening or tightening of the inspection write-up.

In short, the most grievous sin an inspector can commit is to use his own good judgment, while the cardinal virtue of Quality Control is "don't rock the boat".

The ultimate authority of the Plant Manager over the Quality Control Department, has in the past, been applied in a balanced, discreet and diplomatic manner. It is now openly repressive, and is so obvious that even the lowest levels of Production Management, such as group foremen, have utter contempt and disregard for any sign of decisiveness or initiative by even the highest levels of Quality Control Management. There is little indication this 'rough-riding' over Quality Control can be eliminated, except in times when cars are hard to sell. This thought was expressed only last week by Mr. Del Bedard, Labour Relations Manager who said: "During times of Market shrinkage the company becomes more concerned with quality standards".

This whole pathetic situation is reflected in the area of safety defects. In this area Quality Control has capitulated to the pressures of Production Management, even to the point where Inspectors have been removed from such critical areas as the Final Heavy Repair Hoist section, where most of the safety repair items should be repaired and inspected. This hoist section consists of seven hoists where vehicles leaving the main line are raised to have underbody repairs and completions corrected. Each of these hoists is manned by a repairman who is under extreme pressure to keep the section clear as approximately 300 vehicles pass through this section per day. Up until recently a Quality Control Inspector was on duty in this area to assure a final underbody inspection after repairs, because this is the last check before the vehicle leaves the plant. It is here where it becomes obvious that top Company Management puts production ahead of all other considerations, including the safety of the general public and its own employees.

are aware, a new vehicles starting procedure is in force in the finalizing area and you, as well as other employees, are required to comply with the driving rules under this procedure that applies to driving production vehicles.

Additionally, I understand that you are aware that the supervision concerned have been contacted by a member of the safety staff to ensure that all safety regulations applicable to the driving of new production units are continuously observed by all parties concerned.

And so on it goes, and the same applies to the appeal I submitted. There are excerpts here from union committee meetings with top level company management, and you can see for yourselves the general attitude of the company towards the situation. The main thing the union brought up was the fact that the inspection had been removed from the hoist area and most of this is concerned with trying to get the inspectors back on that area, but the company flatly refused.

Just a comment, here; Mr. Donegan, of the union said

There is a margin of error on all work done in this plant. We say at present that a car will go out of the system and pass final acceptance check on the repairman's O.K. and that man has been working under real pressure. Our request, in order to guard against any possible error is to return the inspectors and we will be 100 per cent sure. Surely, for the sake of safety you will go along with us on this point. Our concern is that someone, either in the Ford operation or outside, will be killed or hurt by this neglect.

Mr. McKenzie, who is the labour relations manager said:

We are prepared to go back on the floor and investigate this problem. Eventually, they went back on the floor and there was a meeting. Representing the company was Mr. McKenzie, Mr. Campole, the manager of quality control and Mr. Kennedy, manager of safety. They refused to put the inspector back on the hoist, but they did concede that they would have an inspector look at cars that had brake or steering linkage defects only. They made this commitment but it was never carried out. The safety man came back later and inferred that it was all my fault because I did not use the proper starting procedure in the car in the first place, which I denied. It just shows you the attitude of the company towards this kind of thing. When a person submits a safety grievance the general attitude seems to be: If you had not started the car in the first place we would never have found any of this out; therefore, there is no problem.

Here is a statement made by Mr. Hallsworth, director of industrial relations and he is also vice president of the company, having been recently promoted. He got a little angry by the sound of this and said:

You have made your point, gentlemen. There is a safety problem in finalizing and we are going to look at it again.

Mr. McKenzie, the labour relations man said:

I will not move from my position of 50 per cent and feel that we have really moved.

What was the outcome of all this to stem the tide of unsafe vehicles? Nothing. The company even did not live up to their commitment of a partial check of brakes and steering. On Thursday last, for example, no less than

vehicles with one or more safety defects were sent into the finalizing area, and consequently to the dealers, without the promised check by the hoist inspector. Three of these were not even repaired as you can see from the back sheet. Among the defects were defective brake systems, starting gear, loose motor mounts, loose steering column bolts, steering operation defective, gas tanks leaking, accelerators sticking, defective drive shafts.

Last week, for example, I picked up a car for a special check and found it had no brakes. I immobilized the unit, according to the proper procedure, and ten minutes later I handed it over to the supervisor in charge of the area and handed him the keys in the proper manner. Ten minutes later, I found the car back in the shipping area with the brakes still defective and a driver already in it ready to take to the dealer. I immobilized it again and called my union representative and he took it to a higher level of management and had the car fixed, I think. Before I left the plant on the week end I took a unit for a test and found that three of the four nuts holding on the rear wheel were loose.

These problems that I have mentioned can only be solved if quality control is made an agent of the public's right to be protected, rather than merely an aid to smooth plant management and operation as it is now. Whether this is done within the company framework or by direct governmental action is irrelevant, but done it should be. Thank you.

The CHAIRMAN: Mr. Heas read the first few pages of his brief. I would suggest, if you agree, gentlemen, that the entire brief be made an appendix to today's proceedings.

Some hon. MEMBERS: Agreed.

Mr. SHEFFE: Mr. James Milne will comment as briefly as possible on parts of your brief.

Mr. JAMES MILNE (*Local 707, United Automobile Workers*): Gentlemen, I will skip over the greater part of my brief because it is quite lengthy. I will try to emphasize the highlights and all the pertinent facts in between. I will start on page 2, half way down, where I say I feel, and quite sincerely so, the assembly line worker has not adequate time to work at a proper pace in order to put out a quality product which is safe. Gentlemen, I believe this is definitely your concern. If I am allowed to continue, I hope I can show you, with undisputable evidence case after case and cases where, due to the working pace, supervisory pressure, harassment from management, the assemblers on our assembly lines have no dignity, have no pride, have no recourse but to do what work they can and let the work they cannot get done go unfinished. This may be a safety item, which could result in the death of a friend, a family, or even themselves, by meeting one of these vehicles on the highway—one which they were compelled to let go past their station incomplete, hoping someone down the line would detect it was improperly done or incomplete and correct it. If this is not detected it is quite conceivable the vehicle will be quite driveable, and the defect may not show up in any of the tests. However, somewhere, sometime, the defect may give its wear and tear on the car and this to me is a very important point in relation to the alarming death rate on our highways today.

To illustrate my point, let me give you a few actual case histories from my files at Ford.

The first case to which I wish to refer I have chosen because of the frustrating effect on the employees and because I feel it is a classic example of an employee who is damned if he does and damned if he doesn't.

I refer to a production standards grievance, lodged April 25th, 1966, by a Mr. J. McDonald, Badge No. A394 from Department 0800 in the Ford Ontario Assembly operations. Mr. McDonald was a cushion builder on the cushion line. I read as follows:—

"I, the undersigned, do grieve that I have an unfair work load.
I, therefore, request that this situation be rectified".

I am going to skip here, gentlemen, down to the bottom of the page where we have had our meeting, and this was the answer from the company:

As a result of a further review of your operation and the available data, it has been determined that under normal conditions you are not required to work in excess of a normal day's work.

It is realized, however, that from time to time, a condition may arise whereby you are required to work in an area which is not your normal work area. In the event that this situation arises, due to conditions beyond our control and where it is indicated that you would be unable to recover without working in excess of normal, compensating adjustments will be made to ensure that you will not be required to work in excess of normal.

Additionally, I understand you have been instructed by your supervisor that if an assembly arrives in your work area lacking some of the necessary hardware, you will be required to complete only that portion of your operation for which hardware has been provided.

It would appear in reading the above, we have reached an agreement that should take the pressure off this employee. After all the company has agreed (1) there are times the material is not there for this man to work with; (2) there are times legitimately where this man will float out of station and should get help but this was not the case, after accepting the answer in good faith on June 10th.

This man was issued with two conduct reports against his record—

I will skip down now, gentlemen, to the actual interview with the industrial relations representative, Mr. Bunn.

Mr. Bunn to McDonald

"Do you think that you have too much work?"

McDonald

"Yes, I run at it all the time. I try different ways to keep up, but I can't know that I slip down the line sometimes".

Bunn

"Your supervisor, Bill Wren, tells me that you are not putting the anti-squeak in".

McDonald

"When I get behind, the foreman tells me to forget the anti-squeak. The only other time that I don't put it in, is when it is not on the seat."

Bunn

"You have been told to miss a job if the stock is not there?"

McDonald

"That is right."

Bunn

"They have three other men on the other shift that can do this operation and one other one on this shift."

McDonald

"I didn't know that."

Bunn

"We will discipline you."

McDonald

"O.K.—I can't help it."

Bunn

"You go back and try to do the job."

I draw your attention now to the case of Mr. H. Dagley, assembler on the final line. Mr. Dagley's operation—

The CHAIRMAN: I was going to suggest that this is all in your brief—

Mr. MILNE: Yes, this is all in the brief, sir.

The CHAIRMAN: It is going to be printed, I hope, as an appendix. On account of the shortness of time I think perhaps the members will have the opportunity to read it; I suppose most of them have read it already, if that is satisfactory to you.

Mr. MILNE: Yes, sir. I would like to read one last section here, because it is very brief.

The CHAIRMAN: I do not want to interrupt. I was just trying to get it on the record as quickly and properly as possible.

Mr. MILNE: I will go to the last page:

Time does not permit me to go into numerous other cases, which I could quote to you—some so fantastic, they verge on the edge of being unbelievable. Can you imagine an employee being given the title of Mr. Quality of the Day? Because of his conscientious work, the man was given the red carpet treatment by the company. He was allowed to walk around the plant all day—eat with the executives—have his car washed and shone in the company garage—have a company car for his own use for a twenty-four hour period. But, alas! all good things must come to an end. Our Mr. Quality, due to a reduction of available work in his home department, had to be transferred to the final assembly line where he was put on a job that he could not keep up with. So what happened? He was given a misconduct for failing to keep up every day he was on the operation until the Union was called in. When the Company could not find anyone who could keep up, they finally split the work up and put two men on it.

In conclusion, I refer you to my opening remarks and say again, it is my considered opinion, the worker on the assembly lines in our plants at Oakville today, have not adequate time to do a quality job which will produce a safe vehicle for our highways.

I present this brief on behalf of Local 707.

The CHAIRMAN: Thank you very much, Mr. Milne. Is it agreed that Mr. Milne's brief be printed as an appendix to today's proceedings?

Some hon. MEMBERS: Agreed.

Mr. SHEFFE: Mr. Don Read, I do not think you have copies of your brief, but you can file that copy with the Committee, can you not?

Mr. DON READ (*Local 222, United Automobile Workers*): Actually, this is not a real brief. It is two laymen's opinion of two departments in the Motors. One is my own experience, and I have 20 years there. Also I have with me today an inspector who was so annoyed at the quality of the cars going out that he wrote the President of General Motors, and he got the red carpet treatment, too. He was taken up there and he was told by the superintendent of inspection that he would like to see the day when there would not be any inspectors in General Motors.

The CHAIRMAN: Is that to be filed? Is that what you have in mind or do you want to make a summary statement on it?

Mr. READ: I have some photos here I will give you after.

Local 222, welcomes this opportunity to present a layman's view to the parliamentary committee convened by the government of Canada concerning the means of assuring the Canadian consumers a safe vehicle.

To get right to the point, the following outlines in detail the results of our investigations at the factory level and the shortcomings of General Motors with regard to producing a safe car.

Safety switches on automatic transmission equipped cars—

The CHAIRMAN: Mr. Otto, do you mind waiting? You will break the quorum.

Mr. READ: This automatic switch is very important but the switch is made almost entirely of plastic with becomes brittle at low temperatures and often breaks, leaving a car capable of starting in drive or reverse positions. The results can be fatal to anyone passing in front of or behind the car when it is being started.

Then we go to the power plastic hose connections. This part is so defective in the 1966 models that we changed them by the dozens. This model is stronger but still it can be improved. The failure of this part would leave you with only a manual system which takes a great deal of pressure to operate and for most women it would be very nearly impossible.

Park and brake versus emergency brake. The park and brake system that we have in General Motors cars now would only hold the car if it is not moving. The manufacturers are aware of this; hence the name of parking brake. The emergency brake should be installed on all cars and should be installed on the prop shaft at the rear of the transmission, and so provide a safe method of stopping a car if the hydraulic system should fail.

Having been a repairman for 16 years, and I have worked in General Motors for over 20 years, I know a bit about what is going on. In the last two model years there has been an evolution in trying to get anything on wheels past the inspection department. It is not fair in the plant that production supervision has

more authority over what goes out of the plant and what the defects are than the quality control supervision or inspection department. Over the past year, nearly 15 inspection jobs have been done away with.

At the start of this model year they did away with nearly all the paint shop inspectors in the body plant, about 35 of them. In the final finish and the chassis plant, if the paint is let go as directed by supervision we say we have not got time to fix all this mess so we had better let it go; it should not be over here in the first place. Dirty paint, dry paint, orange peel, dents, bad metal underpaint, bad body metal in a moderate form which would not have been passed a few years ago is let go.

Safety switches and stop light switches that are very important in the operation of the car are now made of a cheap plastic which breaks very easily, specially when cold. Safety switches that used to be inspected by inspectors are now put on by an assembler and punched out by him, with periodic checks being made on them, with very bad results, such as cars starting up in reverse and drive causing people to have their legs jammed and broken between cars when starting up on the lines.

In heavy reject—this is the heavy mechanical end of it—the production group leaders are furnished with a punch to pass out the cars. They have done away with some of the inspectors there. This job was formerly done by inspection. They have done away with our inspectors on the final check in the light reject pits.

The CHAIRMAN: You are making the point about the lack of proper inspection in time and so on. This is an illustration of that and the result of the failure to have proper inspection, and so on. I suggest, if the Committee agrees, that this be included as an appendix to today's proceedings.

Some hon. MEMBERS: Agreed.

Mr. WAHN: Mr. Chairman, could I ask which General Motors plant this is that is being referred to?

Mr. SHEFFE: Oshawa.

The CHAIRMAN: Is that all?

Mr. SHEFFE: That is all the written submissions, Mr. Chairman. I might just say before there are any questions that everyone of these gentlemen, with the exception of Mr. Brooks and Mr. Renaud, are in-plant workers who have been selected by their local unions because they have had first hand personal experience with quality control, and safety and production standards. They are here so that they can give you first hand information on what has been reported.

The CHAIRMAN: Do they want to make individual statements?

Mr. SHEFFE: Any one of them can answer any question that may be directed to the group.

The CHAIRMAN: Mr. Honey and Mr. Mather have their hands up. Mr. Tolmie and Mr. Whelan.

Mr. HONEY: Thank you, Mr. Chairman. I know that all Committee members will join with me in thanking the gentlemen who are before us today to give evidence, I might just say that one of our concerns, gentlemen, was that in order

to finalize a report to the House of Commons we wanted first hand or the best evidence available on this particular point. In other words, we did not want hearsay evidence, and I think in this respect we are very pleased that we have today some first hand evidence. Of course, as Mr. Sheffe said in his introductory remarks, we know there is no intention to berate anyone or any organization. The responsibility of this Committee is to get at the facts.

I just have two or three questions. I will not ask this of anyone in particular—anyone who feels they would like to comment on it may—but Mr. Read indicated that in the last two model years, the question of adequate quality control has become more difficult. I think the words used were, the production supervision has more authority than quality control. My question is, has this situation been evolving over ten years, two years, or over what period of time?

MR. READ: I would say that in our plant it has been the last four or five years, but over the last two or possibly three model years, it has really become difficult. The inspector will not punch it out; the foreman will go and get his foreman and tell him to punch it out.

MR. HONEY: Is this a situation which you could relate to increased pressure from the production aspect? In other words, is there a greater drive to get the motor vehicles off the line than there was three or four years ago?

MR. READ: Most certainly.

MR. HONEY: And would you say that this model year it is more intensified that the situation is more critical than it was last year?

MR. READ: I think it has increased.

MR. HONEY: I have one other question and then I will pass because we are very short of time, Mr. Chairman. The question I want to ask Mr. Sheffe or any other gentlemen here is with respect to the option given to automobile purchasers to pay, I think you said, \$40 to \$80, to have an inspection procedure on your particular automobile. Did I understand you correctly?

MR. BROOKS: Yes.

MR. HONEY: I am sorry, it was Mr. Brooks. Has the UAW done any research work on the cost of an inspection on each vehicle? I have in mind, for example, that if this Committee were to recommend to the House of Commons that government inspectors be assigned to each vehicle—not only to government vehicles, but to every vehicle that went off the production line—do you know how much extra that would cost?

MR. BROOKS: I would say that the cost would be negative simply because the vehicle, if it were properly inspected in the first place as it was going through the system, would not require any special check afterwards. It is only because of the quality control system where, if you want to make sure your car has been checked, you can order a special check. Therefore, the cost of it would be very negligible if the vehicle were put together and inspected throughout the system.

True, there would be more inspectors; there would have to be more inspectors throughout the system. As I suggested, 50 per cent of the inspectors in all plants have been taken off their jobs—removed—not because they were not necessary, but because they interfered with or slowed down the efficiency of running the operation. For instance, if I might just give you an example, if a

engineered specification calls for a spot weld every four inches and the chap cannot keep up, he puts one every six inches and nobody knows the difference except when he complains and we have someone we could appeal to who could stop it. The vehicle coming off the line should be first class when it goes out to the public.

Mr. HONEY: Is your suggestion, Mr. Brooks, that if there were government or other assigned inspectors to inspect each automobile, this process would back up to the assemblies so that there would not be the problem we are getting now? Is that your suggestion?

Mr. BROOKS: Correct; absolutely correct.

Mr. HONEY: Thank you, Mr. Brooks. Thank you, Mr. Chairman. I will pass now.

Mr. HENRY RENAUD (*President, Local 200, United Automobile Workers*): Mr. Chairman, may I interject with respect to Mr. Honey's question on quality control and lack of it—

The CHAIRMAN: Just call your names—

Mr. RENAUD: Mr. Renaud from Local 200. I would like Mr. Honey to make note of this, and the other members of the Committee as well. Most of the plant managers today in Canada compete with plant managers in the United States for production purposes and output. They are competing with one another for merit awards and bonuses, and this is one of the problems confronting us in the Canadian industry today. They are not only competing in the Canadian market, but with their American brothers on the other side. To operate their plants on less money with more production is their ultimate aim.

Mr. MATHER: Mr. Chairman, like Mr. Honey, I want to compliment the delegation on having made a very effective presentation of their testimony. The Committee, I think, shortly will be considering drafting its report for submission to Parliament, and in line with that would I be correct in saying that your two or three recommendations to this Committee would be in line with combating the unsafe conditions in the industry; that is, the reinstitution of the constant check rather than quality control, and the establishment of government inspectors in the manufacturing plants and also in the component industry plants?

Mr. SHEFFE: That is correct. The federal government inspection system would make sure that the inspection procedures met certain standards. I think the production standards, which at present do not allow the assemblers to assemble the cars properly, ought to be subject to inspection by an outside agency as well as the actual inspection procedures themselves.

Mr. MATHER: If you had this governmental outside agency actually in the plants it would, in effect, provide a balance between your impetus for production and your safety factors, I would think.

Mr. SHEFFE: Correct.

Mr. MATHER: Therefore, those two or three points should be borne in mind by our Committee when we come to consider our report. Thank you, Mr. Sheffe.

The CHAIRMAN: Are you through, Mr. Mather?

Mr. MATHER: Yes.

The CHAIRMAN: Mr. Tolmie and then Mr. Whelan and Mr. Wahn.

Mr. TOLMIE: Mr. Chairman, I should like some information. I have been informed that formerly the inspection department for quality control was separate from production, but now in certain instances these two departments are together, and that the production department is in control of and has jurisdiction over quality control. Is this correct?

Mr. BROOKS: You are correct on all points. This is a practice throughout the industry. Prior to that, an inspector could tell any supervisor in the plant where to go in so far as writing off that repair is concerned. Today this is not so. He is responsible to the same plant manager who is vying for the awards, or whatever it is they give them, and he now takes orders from him rather than giving orders to the management of the plant with respect to safety.

Mr. TOLMIE: What you are saying, in effect, is that there is no separate, distinct quality control department.

Mr. BROOKS: No. I would say that they all come under the same management. Although there is a separate department called quality control, it would still be under the same management.

Mr. TOLMIE: Under production control.

Mr. HEAS: There is such a thing as a quality control manager, but he is under the authority of the plant manager who has the right to overrule him any time he sees fit, and these times are becoming much more frequent. It has come to the point now where nobody even bothers to challenge anything. If the production group foreman says that goes, you do not even put up a fight any more because you know your own supervisors are hog-tied because their manager is hog-tied. Therefore, the whole thing becomes a morass.

Mr. TOLMIE: I have one more question. I believe that in order to have proper federal inspection, it not only should be in the plant itself, but there must be some way of getting federal inspection of the auto parts in the plants which are located all across the country. Now, what practical suggestions would you have in this regard?

Mr. BROOKS: It could be handled in a way similar to the general factory act or the industrial safety act. I do not think you could have an inspector in every little alley shop that grows up in the country, but certainly the employees there whether or not there is a union, should be able to call an inspector and advise him of what is taking place, and he should be able to go in in the same way as in any other processing industry.

Mr. SHEFFE: I should like to say, Mr. Tolmie, that in the aircraft industry—the one which I am familiar with—there are some 2,000 or 3,000 subcontractors who supply parts to the industry. They are able to meet Department of Transport specifications with some kind of federal control in their plants. There are some 400 or 500 parts plants in the automobile industry. Surely there could be some method of control over this number.

Mr. TOLMIE: Are American car manufacturers objecting to federal inspection?

Mr. SHEFFE: I am not sure whether the new legislation which becomes effective next year requires this. Of course, there are more rigid specifications. I am not aware of how they are policed.

Mr. TOLMIE: Thank you.

Mr. BROOKS: We can assure you that any car made in Canada and shipped to the United States under the auto act does get extra scrutiny.

Mr. TOLMIE: Thank you.

Mr. RENAUD: May I just make one comment with respect to the gentleman's question? One of the problems confronting us today is the lack of proper receiving inspection of material coming from outside vendors. Now, the big corporations today are dependent upon the small corporations for their product meeting the required specifications. They are only taking spot checks; very loosely. They always take spot checks. If we had adequate receiving inspection when the material is received by the big companies we would have it right at the source before the product is put into the vehicle. This is one of the problems confronting us today. We used to have a more thorough receiving inspection than we have at the present time.

Mr. WHELAN: First of all, I believe that your Local 444, by resolution, is going to take it to the general union.

Mr. BROOKS: Yes.

Mr. WHELAN: Was it passed and endorsed?

Mr. BROOKS: Unanimously. We are here as the result of taking it through our district council so that the image of one firm would not be pitted against the image of another, because the practice is general. It was taken there and as a result of that, this committee here was set up. As we said earlier, we would like to have done a more UAW-thorough job if we had had the time to do it.

Mr. WHELAN: They all endorsed the fact that we should have federal inspectors?

Mr. BROOKS: Unanimously.

Mr. WHELAN: I want to get one thing clear in my mind: are the inspectors you have in the plants now members of UAW?

Mr. BROOKS: Yes, of the bargaining unit.

Mr. WHELAN: It sounds as though even if these inspectors make grievances, nobody pays any attention to them. Do you have time study people? I understand the procedure in some of the plants includes a union representative on the study.

Mr. BROOKS: Yes.

Mr. WHELAN: I am just trying to get this clear in my mind. Have the union time study people sent in reports on what the inspectors are complaining about?

Mr. BROOKS: The union time study would not be employed in that way, but there were a complaint on the job such as was raised today that a man could not complete his operation, we would put out own time study man on there to make sure that the worker was being totally honest with all parts. Yes, we check

it out. If we find the man does not have enough time and we do not get the co-operation to remove some of the work, we call in other people to make an independent time study in such a case.

In other cases the workload is adjusted, but from time to time we find that mainly the worker is not given a proper chance, particularly if he is replacing a fellow. For instance, in one week we replaced 300 men in the plant through sickness or other absence. New employees were on those jobs, at 50 jobs an hour; they could not do their jobs properly. The job had to go on, as I have illustrated here, in a fashion that would not be conducive to a safe vehicle, particularly once it got the shakedown treatment. Mr. Baillargeon here can tell you of the manner in which the automobile companies fasten their cars to the flat cars on the railroad for shipping. They were putting them on with a chain and they found out that this was shaking the car loose—the body itself.

Mr. WHELAN: Shaking it apart.

Mr. BROOKS: Right, so they put the chain straight down and blocked the wheels. Undoubtedly the car that was affected that way was not fabricated properly because it should be able to withstand that kind of treatment.

Mr. MILNE: Mr. Brooks answered what I was going to say.

Mr. WHELAN: I just wanted to know how many inspectors would be involved. They are all UAW members, and if we put in all government inspectors, would these people be absorbed through your union in the plant or would they have to find new jobs? Would they be hired by the government?

Mr. BROOKS: We are concerned with the public safety, and we would let the manpower questions be determined by the specifications laid down by the government inspector.

Mr. WHELAN: I thought maybe they might want to become government employees because this government has given them the same rights.

Mr. BROOKS: You have a government inspector in Chrysler today at this moment going over the vehicles that are being made for the government of Canada. You have one; he is already there, he is constantly there every day checking out some 300 or 400 vehicles that are being made.

Mr. WHELAN: What I am trying to get at is, would you want government inspectors to take over completely or would you still want—

Mr. SHEFFE: No, we are not suggesting that federal inspectors replace the inspection staff. What we are suggesting is that there be federal inspectors there to see that the inspection procedures and standards are adhered to, the same as they do in the aircraft industry.

Mr. BROOKS: Or to fix the pass room.

Mr. WHELAN: I think this was asked when we were in Detroit, but I do not know whether it was recorded or not. Do they have government inspectors in the United States at all?

Mr. BROOKS: This question we cannot answer properly at this moment—

Mr. WHELAN: I am thinking of the interchange of automobiles back and forth across the border.

Mr. BROOKS: We are not sure whether they have any system of federal inspection there. We do know they are raising particular Cain about the safety of vehicles, but I think they are concentrating, in the main, on safety features. Our concern, which we are raising with the Committee, is that no matter how good those features are, if they are not properly fabricated they are of no use to you.

Mr. SHEFFE: I think the federal legislation in the United States will require a certain amount of government inspection to make sure—

Mr. WHELAN: This new legislation?

Mr. SHEFFE: This new legislation which comes into effect next year—to make sure that those standards and specifications are adhered to. This is only conjecture on my part, but it seems to be common sense.

The CHAIRMAN: Do you want to supplement the answer?

Mr. RENAUD: Surely the answer to your question would be that the government inspector in there would overrule the production supervision, and it would till leave our production inspector in there. Right now, if a problem arises on a car, the production supervision can overrule the production inspector. Our idea of having a government inspector in there is that he would have the final say of whether that car goes out for sale or not. This is why we would like to have a government inspector in there, just as we now have with our army jobs and Bell Telephone, and so on. Production cannot overrule this man. The government inspector will stop the sale of this car unless they do it to his specification. This is what we want.

Mr. WHELAN: I just have one further question and then I will be finished, Mr. Chairman. What Mr. Brooks just said amazed me. I have bought only about five cars in my lifetime and I generally run them until they wear out. I did not now you could get a special inspection done on a car and pay for it. I was never told that by the agent when I bought—

Mr. BROOKS: Mr. Baillargeon is a committeeman in the area where they do this type of work.

Mr. BAILLARGEON (*Local 444, United Automobile Workers*): The cost depends on the price of the car; if it is a high priced car it would have more equipment and therefore this service would cost more. On a normal car I would say—on an average worker's car—it would be in the neighbourhood of \$40 or \$45, but it could go as high as \$85.

Mr. BROOKS: What is the nature of the inspection you do?

Mr. BAILLARGEON: The car is brought on the road; is is not tested like a production car on rolls. It is brought on the road and the inspector has to put at least 20 miles on it. It is then returned and he gives a complete write-up. There is actually no limit to the amount of time the inspector has to write this car up. It is then given to a trim repairman who checks all trim, the door and window regulators, the door locks, the doors are readjusted if necessary, the hood and check plate as well.

It is then given to a mechanic and he checks every nut and bolt in that car, the oil pan is torqued to the necessary requirements and the same with the head. The tappets need readjusting they are readjusted. The car receives a complete

check. I would say that two men—a trim repairman and one mechanic—will do approximately four cars a day. I feel that it is well worth the money and that we should have this on all cars, because the average production car is checked on rolls, as I said before.

When they first put this set-up in they had to roll these cars at least two miles, but naturally with increased production they cut this time limit down. Most of the cars, at least in the Chrysler plants, have approximately three-tenths of a mile on it and this is all the check they get. Now, on rolls the only part of the car that is actually checked is the motor, transmission and read end.

Mr. WHELAN: You use the terminology, "on rolls".

Mr. BAILLARGEON: The roll operation is one where the back wheels of a car fall into a—

Mr. WHELAN: Oh, yes, I know what it is.

Mr. BAILLARGEON:—lower level—

An hon. MEMBER: A set of rolls.

Mr. BAILLARGEON: Yes, a set of rolls.

Mr. WHELAN: Yes, and they run the motor on them.

Mr. BAILLARGEON: That is right. They check the kick-down and the brakes, but again this would only apply to the brakes in the rear wheel. There is no check of the front wheel brakes and front wheel bearings—there is no check there whatsoever.

The CHAIRMAN: Gentlemen, you just have about another five minutes unless you want to come back after.

Mr. RENAUD: I think 99 per cent of the buying public has no knowledge of this special inspection.

Mr. WHELAN: Well, I just want to say one thing if I may. I understood that if somebody in the plant knew your car was coming through they may weld it better, assemble it better and so on. I have heard of this, but I did not know there was some special agreement that could be made with the dealer.

Mr. READ: The Department of National Defence jobs have pre-service on them. This is the service—pre-service.

Mr. BROOKS: I might say to you in all fairness that a dealer is supposed to go over the car, but there is no assurance that he ever does. I believe he gets some allotment for going over the car, but our experience shows that it never happens.

Mr. WHELAN: All I ever did with every car I bought was to drive the hell out of it right away as soon as I got it so that if anything did go wrong it was still under guarantee.

Mr. SHEFFE: I am sure that providence is watching over you.

The CHAIRMAN: I have been trying to get Mr. Wahn in with a question, gentlemen.

Mr. WAHN: It is a very quick one, Mr. Chairman. I would just like to be sure I understand what the witnesses' recommendations are. As I understand it, you

recommend that the government should approve the quality control and inspection procedures which are carried on in each plant. Is this right?

Mr. BROOKS: No, not approve them—supervise them.

Mr. WAHN: Yes, supervise; approve and make sure they are satisfactory and—

Mr. BROOKS: That they are carried out.

Mr. WAHN:—that they are carried out. Now, in addition, are you recommending that government inspectors should actually inspect and approve each completed car when it comes off the assembly line?

Mr. SHEFFE: No, we are suggesting, Mr. Wahn, that the government inspector would make sure that the inspection procedures are adhered to.

Mr. WAHN: That I understand.

Mr. SHEFFE: Now, there are ways and means of doing this. Again, I refer to the aircraft industry where final inspectors are licensed by the Department of Transport to sign off aircraft. They are responsible, and when they have that responsibility they are not going to sign off a car unless they know it is road-worthy, no more than a final inspector in the aircraft industry would jeopardize his job by signing off an aircraft unless he was absolutely sure it was airworthy. I think some system such as this, as well as federal supervision of the inspection and work standard procedures, ought to be implemented. This is what—

Mr. WAHN: You do not see federal inspectors actually passing on cars as they come off the inspection line?

Mr. SHEFFE: No, sir.

Mr. BROOKS: Not necessarily. What has happened here is that it is filed with report cards today which the general inspector writes up, and then it is defiled. We need someone we could appeal to so that the inspector would have the backing, once having noted that it was defective. If it were only for those cards that we knew of when we complain and the company could be stopped from this practice, that is all that would be required. We are not asking you to put 500 inspectors in every plant.

Mr. WAHN: May I ask one further question, Mr. Chairman? Do you take exception to the fact that the quality control and the inspection departments are not sufficiently independent at the present time and subject to the jurisdiction of the production department and the plant manager?

Mr. BROOKS: It has no backing to protect the public.

Mr. WAHN: To whom should they report?

Mr. SHEFFE: They should be a separate department with the authority to stop the vehicle from going out the door until they are satisfied that it is road-worthy.

An hon. MEMBER: Backed up by a government inspector?

Mr. SHEFFE: Yes, backed up by a government inspector.

Mr. BROOKS: There should be two separate managers, as such. One manager would be sacked if his cars were going out without being inspected and checked properly. He would be responsible. That would be his job, and he would be solely responsible for it. The other manager would be responsible for the production end of it, and they were independent of each other before. A factory inspector under that manager told anyone else where to go if they did not like the regulations he laid down with respect to fabricating a job. Today that does not exist; they are all under one.

Mr. WAHN: I think today there was specific reference to the Ford Oakville plant and the General Motors Oshawa plant. Am I correct in thinking that your comments apply to all automotive plants in Canada?

Mr. SHEFFE: They refer to the industry; this is the general procedure in the industry. As I said in my opening remarks, we are not singling out any one particular manufacturer. This is general throughout the industry.

Mr. WAHN: Thank you, Mr. Chairman.

Mr. WHELAN: I just wanted to ask one short question. Are you satisfied now with regard to the inspections on, say, army vehicles or government vehicles which the government inspectors put on the market? Do you think it is as thorough as it should be, from your knowledge?

Mr. BROOKS: We think that any member of the public who gets one of those vehicles and has an accident could not associate it with the car, or a defect in the car, unless it were an absolute breakage of some kind.

Mr. WHELAN: When government vehicles are being built on the line do the supervisors and other people in charge of the line demand that the same speed be maintained in production of these vehicles as for vehicles for the ordinary citizen?

Mr. BROOKS: Some areas do not.

Mr. HEAS: They are usually produced on the same lines at the same speed as the other ones, but they are held in the finalizing department. Then they call in a man who goes over them and says, I want this and this and this fixed, and they do it.

Mr. WHELAN: Does he watch the assembly?

Mr. HEAS: I am not too sure. Maybe he does that too.

The CHAIRMAN: There is the summon to school for the members, but go ahead.

Mr. MILNE: Actually, what happens is that in each department some men are labelled for the special job and before going into the next department the car is held and rechecked and repaired, while the ordinary production unit goes through a steady flow of departments. You must realize that once it is put on any one of the assembly lines, it goes through at the same rate of speed as any ordinary car. So this is what they do: they wait until the end of the department and then pull it, off, and when it is up to par they ship it back into the system and it leapfrogs it through the various departments.

The CHAIRMAN: Thank you very much.

Mr. SHEFFE: Mr. Chairman, I would like to thank the Committee and you for giving us the opportunity to appear here today.

The CHAIRMAN: We are very glad to have you, Mr. Sheffe, and we hope you will come back and put on the record all you wish to put on the record. Perhaps you could come back later when we are not so pressed, but I think we have done very well to have finished just as the bell rings. Thank you very, very much gentlemen. The meeting is adjourned.

APPENDIX "20"

I am here today, to represent Local 707 U.A.W. I have been selected to come before you because of my position in the Local and because of my closeness to the problems in Local 707 regarding production standards and how they affect the safety of the vehicle as it leaves our plants.

Local 707 U.A.W. represents the hourly rated employees at the Ford Assembly Plants in Oakville, Ontario.

I am employed as a Paint Repairman. I have been a paint repairman for approximately six years. Prior to this, I was a finished vehicle repairman.

On the other hand, I have been trained under the auspices of the U.A.W. to be recognized as a qualified Industrial Engineer and to take care of the production standards language which we were able to negotiate in our last set of negotiations. Over and above this training I received from the U.A.W., I have, on my own, attended courses in Time and Motions Study at the Ryerson Institute of Technology in Toronto. I successfully completed this course and took a further course at this same Institute on Industrial Psychology and favourably completed this course, as well.

Over the thirteen years I have been with Ford, I have worked on various operations, both on and off the production lines, so I feel I am well qualified to speak for each and every hourly rated worker at Ford of Oakville.

Before I give you a few case histories which are documented, and without a doubt have proven what I have to say, I have a few words I think should be said inasmuch as the U.A.W.'s history in its fight for a proper work load environment within the plant is concerned.

If any one reason was to be singled out why autoworkers rose up more than a quarter of a century ago to form the U.A.W., it would undoubtedly have to be, more than anything else, they were determined to put an end to the inhuman work pace within the factories. Surely, of all the working conditions which had become intolerable, and there were many, the speed-up, as the workers called it, was the greatest thief of their dignity.

Yet the workers soon found out the mere existence of the U.A.W. did not end this evil. In the years since the formation of the U.A.W., no other single in-plant problem has occupied so central a place as the speed-up has in the U.A.W.'s daily struggle to maintain workers' dignity.

Experience also quickly proved to the membership, as well as to the leadership, the problem would not be solved by mere periodic negotiation of contracts. They are the only one link in what must be a continuing chain of action in the plant, if intolerable working conditions are to be stopped and the work pace kept within the bounds of human endurance. The U.A.W.'s fight for a fair day's pay has never stopped, but neither has the U.A.W.'s insistence upon a normal work pace as a basis for a fair day's pay.

I feel, Gentlemen, at this point, you are probably asking yourselves what has a fair day's pay for a fair day's work to do with automobile safety?

I feel, and quite sincerely so, the assembly line worker has not adequate time to work at a proper pace in order to put out a quality product which is safe. Gentlemen, I believe this is definitely your concern. If I am allowed to continue, I hope I can show you, with undisputable evidence case after case and cases where, due to the working pace, supervisory pressure, harassment from management, the assemblers on our assembly lines have no dignity, have no pride, have no recourse but to do what work they can and let the work they cannot get done go unfinished. This may be a safety item, which could result in the death of a friend, a family, or even themselves, by meeting one of these vehicles on the highway—one which they were compelled to let go past their station incomplete, hoping some one down the line would detect it was improperly done or incomplete and correct it. If this is not detected it is quite conceivable the vehicle will be quite driveable, and the defect may not show up in any of the tests. However, somewhere, sometime, the defect may have its wear and tear on the car and this to me is a very important point in relation to the alarming death rate on our highways today.

To illustrate my point, let me give you a few actual case histories from my files at Ford.

The first case to which I wish to refer, I have chosen because of the frustrating effect on the employee and because I feel it is a classic example of an employee who is damned if he does and damned if he doesn't.

I refer to a production standards grievance, lodged April 25th, 1966, by a T. J. McDonald, Badge No. A394 from Department 0800 in the Ford Ontario assembly operations. Mr. McDonald was a cushion builder on the cushion line. It reads as follows:—

"I, the undersigned, do grieve that I have an unfair work load. I, therefore, request that this situation be rectified".

Mr. L. Rumble, General Foreman of the Department, answered this grievance on April 29th, 1966, with this reply:—

"Our review of your operation and the available data indicates that you are not required to work in excess of a normal day's work.

Therefore, I can find no valid basis for your grievance and must refuse your request".

I appealed this answer on May 3rd and subsequently meetings were held on May 9th and May 19th, at which time I was able to point out to the Company certain off standard conditions which would cause this employee difficulty in keeping up on this operation. From time to time, there were causes beyond his control, but nevertheless, he was chastised for this.

There were two subsequent answers to this, each identical—word for word. The first was signed by Mr. W. G. Clark, Production Manager, dated May 25th, 1966, the second by Mr. B. Lorimer for the Industrial Relations Manager, dated June 10th, 1966. They read as follows:—

"I have reviewed the matter of your grievance and find that the circumstances surrounding your grievance were discussed at a meeting held on Monday, May 9th, 1966 between company representatives and union representatives, acting on your behalf. Additionally, a further meeting was held on Wednesday,

May 19th, 1966, at which time additional information was provided to the special committeeman by the company.

As a result of a further review of your operation and the available data, it has been determined that under normal conditions you are not required to work in excess of a normal day's work.

It is realized, however, that from time to time, a condition may arise whereby you are required to work in an area which is not your normal work area. In the event that this situation arises, due to conditions beyond your control and where it is indicated that you would be unable to recover without working in excess of normal, compensating adjustments will be made to ensure that you will not be required to work in excess of normal.

For your information, arrangements have been made to ensure that cup spacers, which have been arriving in your work area in such a condition as to cause difficulty in your operation, will be separated in order to facilitate assembly.

Additionally, I understand you have been instructed by your supervisor that if an assembly arrives in your work area lacking some of the necessary hardware, you will be required to complete only that portion of your operation for which hardware has been provided."

It would appear in reading the above, we have reached an agreement that should take the pressure off this employee. After all the company has agreed (1) there are times the material is not there for this man to work with; (2) there are times legitimately where this man will float out of station and should get help, but this was not the case, after accepting the answer in good faith on June 10th.

This man was issued with two conduct reports against his record with the company on June 15th and June 20th. The following is a transcript of one of the interviews conducted by Mr. D. Bunn of the Labour Relations Staff, with Mr. M. Locke, Union committeeman, being present on behalf of the employee.

Supervisor W. Wren's Report

"Conduct for failure to perform. McDonald was absent on June 8th, 9th and 10th and I put a new man on the line. He kept up. McDonald went down the line four stations. I am getting ready to move McDonald off this line if he can't keep up".

Mr. Locke to Mr. Bunn

"The man he put on the operation was a man with less than 90 days, so he is a probationary employee".

Mr. Bunn to McDonald

"Do you think that you have too much work?"

McDonald

"Yes, I run at it all the time. I try different ways to keep up, but I can't. I know that I slip down the line sometimes".

Bunn

"Your supervisor, Bill Wren, tells me that you are not putting the anti-squeak in".

McDonald

"When I get behind, the foreman tells me to forget the anti-squeak. The only other time that I don't put it in, is when it is not on the seat."

Bunn

"You have been told to miss a job if the stock is not there?"

McDonald

"That is right."

Bunn

"They have three other men on the other shift that can do this operation and one other one on this shift."

McDonald

"I didn't know that."

Bunn

"We will discipline you."

McDonald

"O.K.—I can't help it."

Bunn

"You go back and try to do the job."

I draw your attention now to the case of Mr. H. Dagley, an assembler on the final line. Mr. Dagley's operation was, and I believe still is, the installation of seat belts.

On the morning of June 2nd, 1966, at 10:40 a.m., Mr. Dagley was called to the office of Labour Relations for the purpose of being interviewed regarding a misconduct issued against him by his supervisor, Mr. P. Webber, for not performing as instructed on May 18th.

The interview was conducted by Mr. P. Drouillard of the Labour Relations staff and reads as follows:

What is your job?

Seat belt operation and sub-assembly battery bracket and install them.

What is your problem?

Not enough time.

On this day in question, 25 units incomplete, battery brackets not installed. Has your foreman instructed you?

Yes, I've tried it.

You say not enough time. Is there any other reason, such as stock guns, etc.

Yes, sometimes the holes are full of sealer or rugs are over the hole.

Have you complained about too much work?

Yes, I have told him also the trouble.

Have you grieved it?

No, just complained to the foreman.

What are you missing most on the job?

Bolts for seat belts mostly.

Have you been sub-assembling brackets?

No, not enough time. When job was given to me, I protested it, but I have been trying—just not enough time.

- Q. Have standards been down on this job?
 A. I have seen them around, but I don't know if they have checked me.
 Q. What problem with brackets?
 A. Clips could be off centre of holes, sometimes no holes, then either way can't get job done."

(End of interview).

In my opening remarks, I made reference to supervisory pressure and harassment by management. At this time, I would like to point out here is a case, where an employee was charged with failing to produce on May 18th, and, some eleven working days later, he finally gets a hearing of a sort on his problem. In the meantime, he was under constant pressure from management to produce. This type of action does not go unnoticed by other employees working in the immediate vicinity. The eventual outcome of this hearing was the man was placed on an indefinite suspension, which is to say, he was sent home and told the company would re-check his case and advise him when he could report back for work.

When news of this spread through the department and the plant, it was not long before there were rumours of a wildcat walk-out, on his behalf. When Union representatives received word of these rumours and after weighing their strength, we made strong overtures to the company to bring this man back to work immediately, for two reasons:—(1) to prevent a wildcat strike and (2) to see if we could check this job out and find the solution to his problem.

The Company granted our request and brought the man back to work.

A thorough investigation was made by the Union and we found the following off standard conditions in his operation:—

- (1) holes full of sealer.
- (2) rugs over holes.
- (3) wrong stock in unit.
- (4) no reversible gun.
- (5) clips off centre of holes.
- (6) battery out of place.
- (7) bracket thread will not let nut start.
- (8) rear door locked.
- (9) seat man in the way.
- (10) cardboard in two door units.
- (11) no stock in unit.

We advised the company of these conditions and steps were taken to correct them. I might also add the company paid this man for the time he was off, but can never repay him, or his fellow workers, for the frustration caused by this type of intolerable situation which existed in this area for far too long a period of time.

The U.A.W. recognizes the company's right to discipline and, with certain limitations, has given them this right in our collective agreement, because we realize without this right, utter chaos would result. However, we must rebel, and rebel we will, when the disciplinary system is used to attempt to make one of our members run, in order to meet an exorbitant work load as I will point out in this case history.

In early October, 1966, Mr. Farrugia, an assembler in Department 0800 at Ford, disputed his work load with his steward and foreman. Industrial Engineers for the Company were called in, to view this operation and agreed this man had too much work. They further agreed to have some of the work pre-positioned for this man until such time as they could set up a proper standards.

October 20th, the steward again requested of engineering when they were going to set a proper standards. He was told it was not available as yet.

October 27th, Mr. Farrugia, was suspended for the balance of the shift for failing to keep up. Nine other employees, knowing the injustice of the situation, walked off their jobs in an attempt to pull a wildcat strike. They, subsequently, received an eight day suspension for their action. I might add, the U.A.W. does not sanction this type of action, nor do we condone it. We feel there is an orderly method of settling our differences with the company without resulting to wildcats.

Mr. Farrugia was returned to work the next night and was observed on the operation by Mr. Bill Dover, the Chief Industrial Engineer for the company and Mr. Del Bedard, manager of Labour Relations for the company.

Mr. Dover has stated, at the time he observed the operation, he had no stop watch, he had no distribution, and had no cycle times for the operation. However, he had fifteen years experience and, in his opinion, while he was there the man was keeping up on the operation and when he left the man was actually ahead, inasmuch that he had placed three tail pipes on the operations down the line. Based on this, he considered the operation to be a fair one.

Approximately one-half hour after Messrs. Dover and Bedard left the operation, Mr. Joe Fabian, another member of the Labour Relations Staff, was called and told the man had missed quite a few units. Based on this, he was given another suspension for the balance of the shift, plus 3 working days.

On October 31st, Mr. Donegan, our Bargaining Unit Chairman, and myself, met up a meeting with Mr. Dover, Mr. Bedard and Mr. Alex McKenzie, Manager of Industrial Relations.

Mr. Dover claimed they now had a firm standards and it was available to me as of then. I pointed out to him what he was offering me was still incomplete as there were no times on it. He claimed they would be made available to me that day, November 1st. I reported to Mr. McKenzie our investigation showed, during the time Mr. Bedard and Mr. Dover had observed the operation, there were some twenty-seven defects went down the line from this operation, so the man was most definitely not keeping up on the operation, and neither Mr. Bedard nor Mr. Dover had noticed this.

Eventually, I was supplied with a proper standards on this job. At this time, I was able to prove to the company, at the time of his suspensions, according to the company's own figures on the operation, they were expecting Mr. Farrugia to do five hundred and twenty-five minutes worth of work in a 480 minutes period. Here again, the man was reimbursed for the time lost from work. This does absolutely nothing to repair the damage done to the morale of the men who work under this type of conditions, so intolerable that men with families are willing to place their own family's welfare on the line, in order to correct such a flamboyant injustice to their fellowman.

Time does not permit me to go into numerous other cases, which I could quote to you—some so fantastic, they verge on the edge of being unbelievable. Can you imagine an employee being given the title of Mr. Quality of the Day? Because of his conscientious work, the man was given the red carpet treatment by the company. He was allowed to walk around the plant all day—eat with the Executives—have his car washed and shone in the company garage—have a company car for his own use for a twenty-four hour period. But, alas! all good things must come to an end. Our Mr. Quality, due to a reduction of available work in his home department, had to be transferred to the final assembly line where he was put on a job that he could not keep up with. So what happened? He was given a misconduct for failing to keep up every day he was on the operation until the Union was called in. When the Company could not find any man who could keep up, they finally split the work up and put two men on it.

In conclusion, I refer you back to my opening remarks and say again, it is my considered opinion, the worker on the assembly lines in our plants at Oakville today, have not adequate time to do a quality job which will produce a safe vehicle for our highways.

I wish to thank you, Gentlemen, for the privilege of appearing before you. I feel, if what I have had to say is considered by you, when you close this hearing and retire to weigh all the evidence you have heard inasmuch as automobile safety is concerned, one more link has been added to the U.A.W.'s chain of action in its fight to stamp out the excessive work pace which has left its mark on the finished product at the expense of the General Public.

Thank you.

Presented by James R. Milne,
on behalf of Local 707 U.A.W.
this 1st dy of March, 1967.

JRM/js opeiu-343.

APPENDIX 21

UAW—LOCAL 222 BRIEF ON AUTO SAFETY

Local 222 welcomes this opportunity to present a layman's view to the Parliamentary Committee convened by the Government of Canada, concerning the means of assuring the Canadian Consumers a safe vehicle.

To get right to the point, the following, outlines in detail, the result of our investigations at the factory level and the shortcomings of General Motors, regarding the producing of a safe car.

Safety switches on A.T. equipped cars:

The Switch is made almost entirely of plastic, which becomes brittle at low temperatures and often breaks, leaving the car capable of starting in DRIVE or REVERSE position. The result could be fatal to anyone passing in front of, or behind the car when it was being started.

Power brake plastic hose connector:

This part was so defective in 1966 models, that we changed them by the dozens. This model, they are stronger, but still could be improved. The failure of his part would leave you with only a manual system which takes a great deal of pressure to operate, and for most women almost impossible.

Parking brake vs emergency brake:

The parking brake now in present use will only hold the car if it is not moving, and the manufacturers are aware of this, hence the name of PARKING BRAKE.

The EMERGENCY BRAKE should be installed on all cars and should be installed on the propshaft at the rear of the transmission and so provide a proper and safe method to stop a car if the hydraulic system should fail.

The Committee is prepared to answer any questions you may have on any of these items listed or any other matters you may deem significant. Our Committee represents a considerable amount of service at General Motors and practical experience attained in the actual building of the cars should be of assistance to you in your deliberations.

On February 22, 1967, Bill Stackaruk and I were told not to mark any dirty paint, no dents (unless the paint was damaged or metal damaged) for our Foreman said, if there were any dents on the body of the car, it was body shop metal. We have been told this on previous occasions. Our Foreman also told us in the week of the 20th, that if we mark any of this stuff, he would see that we would be moved to another department. He said that Inspection Supervision, was not interested with the paint below the side moulding, it could be mould or dirty, they were not worried. The only reason they would want to repaint the lower part of the car is when the paint was damaged. If we had a dirty roof on the car, you practically had to scratch your hands on it before they would repaint it.

On the coach cars, with the chrome on the sill, where the sill joins the back of the body, at the back edge of the door, this part of the sill is no longer filled-in

with solder. The Foreman says the Chrome covers it. This leaves a trap for salt and dirt to accumulate in behind the chrome, causing the car to rust more so in the rocker panel.

Production in reject are allowed to put their metal sticker on the windshield of the car and often the metal card that Inspection has written up, is thrown away and the metal work is not done.

Often, to line the front fender up with the edge of the door, a large bar is stuck in behind the fender and it is pried out. As this fender is pried out, you often can hear welds breaking along the edge of the fender, and if a customer gets this car, he will have creaks in it, while the proper way to line the fender up with the door is to shim it out.

There is no inspection in department 63. The other day I lifted up the hood of one car and it hadn't been spot welded half way across the front of the hood, and practically half way down the left side of the hood.

Any Government job is taken off the line to be inspected, also any show job, and they are gone over inch by inch while the public can do with any old thing. However, it is the working man that is making the profit for the Company. (Even exports are given special attention because they have to go through customs)

Last week a car went into the Paint Booth and the drive shaft fell out of it. It happened to be near quitting time and the car was just left there.

The door frames are scratched so they have to be repainted, a lot of these door frames are repainted without sanding them down, therefore if they are not sanded, the paint will not stick and just peels off.

They removed the inspector from 64 department and get all kinds of dry hoods, and dirty hoods. If these hoods are not sanded down properly they very often go out as a dry hood.

There are also different paint mixes, so when your car comes to our department, the body will be off colour from the fenders or the fenders off colour from the hood and we are told to let this go.

I am a Light Reject Repairman, Being a Repairman for 16 years and having worked for General Motors for over twenty years, I think of myself as somewhat of an authority on what has been done in the past and what they are trying to do now.

In the last two model years there has been an evolution of trying to get anything on wheels past the inspection department. It is apparent in the Plant that Production Supervision has more authority over what goes out of the Plant and what the defects are than the quality control Supervision or Inspection department. Over the past years, close to 75 Inspection jobs have been done away with.

At the start of this model year, they did away with pretty near all the paint shop inspectors in the Body Plant, about 15 of them.

In the final finish in the Chassis plant if the paint is let go as directed by supervision, who say "We haven't got time to fix all this mess, so you better let it go. It should not be over here, in this mess, in the first place. Dirty paint, dirt paint, orange peel, dents, bad metal under paint, bad body metal in a moderate form, which wouldn't have passed a few years ago, is let go. Safety switches are

stop light that are very important, in the operation of a car, are now made of a cheap plastic which breaks very easily, especially when cold Safety Switches that used to be inspected by Inspectors are now put on by an Assembler and punched out by him with periodic being done on them. With awful bad results, cars starting up in reverse and drive, a lot of people have had there legs jammed and legs broken between cars when starting up on the lines. In heavy reject, the production group-leaders are furnished with a punch to pass out cars. This job was formerly done by Inspection. No inspection in the light reflect pits where they always were for the final check. Not letting the Inspectors inside the cars on the reject floor area to check the lights and operating mechanism, such as turn signals, horn, lights on dash, high and low beam, and the only time they can, is if it is written up previously. Door lock and hood safety latches are only checked periodically. It seems the case of Tweedle Dee and Tweedle Dum, if no one else has caught it, don't you write it up.

No Inspectors on small parts paint, no Inspectors on the motor line, Inspectors being removed all over the Plant. No wonder the Company are trying to institute a Zero Defect programme. This way they are cutting Inspection, they won't have any left to tell them when they have a defect.

The standards put on the assemblers on the main lines are sometimes so tight that they cannot make a mistake or they are behind. Repairman giving operations. One Repairman had 9 seconds left out of a minute, to repair brakes. What can be repaired in 9 seconds, I don't know!

Tie rod ends under torque and stripped upper control arms are a common thing and are run for shifts before anything is done about them. Low torque is tried to be fixed but nothing is done on high torque where a bolt might break out on the road by being tightened too tight. The Engineering of the car has gone from threaded nut and bolts to screws, speed clips, plastic plugs, push plugs, threaded plastic adjustments which strip easily and break from the cold (ex headlight adjusting screws, headlight rim retainers). On the floor panels where here used to be braces spot welded on these is only a crimp in the metal when the panel is stamped, plastic dashes, plastic grills, lightened frames, lightened clutch and brake rods, clips where there should be cotter pins. There is positive trend to how cheap the Company can assemble it and get in on wheels.

So, what if it falls apart the Dealer will fix it. But they won't. I know of no person's that are still waiting to get two 66 model cars fixed, with a down shift snow shield which was supposed to be recalled last year because the snow and slush freezes up there and they can't de-accelerate or slow down. With automatic transmissions.

If all cars were inspected by Government Inspectors like the Department of National Defence Inspectors, they would only be passing out about fifty cars instead of 900. We of Local 222 are of the opinion that if tighter and more inspection, more time to assemble the car, better material to work with, it would be a reliable, good buy for the Public and there wouldn't be the mysterious accidents there are today.

We are of the opinion that Engineering and Supervision have made such a mess of these cars, that they now have instituted the Zero Defects programme to save the workers bail them out and try to fool the Public with this propaganda.

APPENDIX 22

THE INEFFECTIVENESS OF THE QUALITY CONTROL DEPT.
IN
CONTROLLING SAFETY STANDARDS
AT
FORD OAKVILLE

It is normal in manufacturing plants for Quality Control personnel to be under pressure to accept inferior quality. However, recently at the Ford Oakville Plant this pressure has become so acute that even basic safety standards are being sacrificed on the altar of increased production.

Where once we used our judgement in rating a vehicle's general quality and our foremen were willing to back us up in areas of dispute; we now merely monotonously audit items on a swiftly moving line to an amount and degree which Production Management finds acceptable to write. The Assembly Line Inspectors have become as automatons, and our supervisory staff merely non-decision making 'errand-boys' for Production Management. Whenever an Inspector decides to stop "Ok'ing junk," he is stood over by a supervisor, who will either order him to accept it or will sign the unit out over his head.

From this humbling of the Quality Control Department at Oakville has developed a resultant attitude of "what's the use" among the Inspectors and their foremen. It has now become generally accepted the only way to survive on the job is to co-operate with this prostitution of the Quality Control idea: to be like the three little monkeys who hear no evil, speak no evil and above all see no evil; while at the same time keeping an ear to the ground for any political change within the plant hierarchy which might indicate a possible loosening or tightening of the inspection write-up.

In short, the most grievous sin an inspector can commit is to use his own good judgement, while the cardinal virtue of Quality Control is "don't rock the boat".

The ultimate authority of the Plant Manager over the Quality Control Department, has in the past, been applied in a balanced, discreet and diplomatic manner. It is now openly repressive, and is so obvious that even the lowest levels of Production Management, such as group foremen, have utter contempt and disregard for any sign of decisiveness or initiative by even the highest levels of Quality Control Management. There is little indication this 'rough-riding' over Quality Control can be eliminated, except in times when cars are hard to sell. This thought was expressed only last week by Mr. Del Bedard, Labour Relations Manager who said: "During times of Market shrinkage the company becomes more concerned with quality standards".

This whole pathetic situation is reflected in the area of safety defects. In this area Quality Control has capitulated to the pressures of Production Management, even to the point where Inspectors have been removed from such critical areas as the Final Heavy Repair Hoist section, where most of the safety repair items should be repaired and inspected. This hoist section consists of Seven hoists

where vehicles leaving the main line are raised to have underbody repairs and incomplections corrected. Each of these hoists is manned by a repairman who is under extreme pressure to keep the section clear as approximately 300 vehicles pass through this section per day. Up until recently a Quality Control Inspector was on duty in this area to assure a final underbody inspection after repairs, because this is the last check before the vehicle leaves the plant. It is here where it becomes obvious that top Company Management puts production ahead of all other considerations, including the safety of the general public and its own employees.

On the 17th of September, 1965 a fellow worker of mine, named John Scullian, was killed in the Final Repair area by a vehicle which was driven with no brakes. Following this tragic accident, in which the Ford Motor Company was found to be negligent by the coroner's jury, a set of rules was posted by the Industrial Relations Manager, Mr. Alex McKenzie. It indicated a safe procedure for starting and driving new vehicles. Protests came from the production management who asserted the new procedure would impede the fast rate of flow of cars in the finalizing area. Mr. McKenzie bowed before this pressure and issued a new set of rules, specifically for the finalizing area, which was in fact a negation of the safe starting features of his other rules.

THE FOLLOWING IN CHRONOLOGICAL ORDER IS A SERIES OF EVENTS
SURROUNDING A SAFETY GRIEVANCE WHICH WAS SUBMITTED BY
MYSELF TO THE COMPANY REGARDING UNSAFE VEHICLES

October 12, 1966.

On the morning of Oct. 12th, 1966 I approached my work area and found a new vehicle stationed there which was left from the other shift. I attempted to start the vehicle when it leaped forward out of control. Having brought the unit to a safe stop I discovered the following defects with no reference to them on the work card:

- (1) No Brakes.
- (2) Accelerator Sticking.
- (3) Steering Tie-rods Loose.
- (4) Emergency Brake Inoperative.
- (5) Transmission Defective (Fluid leaking on floor).

The stool which took the place of a missing front seat was not properly bolted to the floor, and fell back when the unit started. On further investigation I found many other vehicles with similar defects with no reference to them on their respective work cards. I immediately called my Union Representative and submitted the following Safety Grievance: "I the undersigned do hereby grieve that I am being compelled to work under unsafe working conditions. I therefore request that this problem be corrected immediately."

Signed: Michael Heas

October 13, 1966.

The next day October 13th, and many other days thereafter I reported and documented vehicles which were unsafe to drive and did not have their defects recorded, nor was the established immobilization procedure being followed. It

was these disclosures which brought home to us the significance of the removal of the Inspector from the much pressured Final Heavy Repair Hoists.

October 14, 1966.

On October 14, 1966 I received the following answer to my Safety Grievance from the Company:

J. R. Tanner, Ford Motor Company—As you are aware, a new vehicle starting procedure is in force in the Finalizing area and you, as well as other employees, are required to comply with the driving rules under this procedure that apply to driving production vehicles.

Additionally, I understand that you are aware that supervision concerned have been contacted by a member of the Safety staff to ensure that all safety regulations applicable to the driving of new production units are continuously observed by all parties concerned.

The same day I appealed this decision in the appropriate manner.

That afternoon the Union Committee met with the Company Representatives. The following are pertinent extracts from the minutes of that meeting:

McKenzie, Manager Industrial Relations—We feel there is a real element of resistance from the men in doing a good quality job. In the last 2 days they have turned out nothing but junk.

Donegan, Union Chairman—The answer is very clear, your foremen are pushing out this so called junk, because a man cannot complete his job and the foreman lets the job and the unit go down the line uncompleted. A car going off the end of the line with only 2 bolts holding a wheel on. The problem of poor quality is really the fault of a poor production standard being set.

In the area of hoist repair, we have a real problem which has not been raised at this level. We have always had an inspector check out the repairs made before the car is put back into the system. At present, we are alarmed that the cars have not been inspected safe, and are out for shipment. A good example was a car we found with a flat tire out in the yard. When it was brought in, it was found it also had brakes which were defective and the sway bars were not hooked up. The brakes had not been tested since repairs—fittings were leaking at the brake cylinders. We raised the problem at the floor level with safety and he was as alarmed as we were. The floor level management did not have this concern. When we did not get any results, we contacted Alex McKenzie and all we got was a lot of excuses.

McKenzie, Company—I have raised this problem with Mr. Tuppe (Quality) and Mr. Waite (Production). You talk as if the Inspectors had been there before for Safety. This is not so. The repairmen are supposed to take the car and make the repairs on the card. They are responsible for the completed job they have done, that is what they are paid for.

Donegan, Union—There is a margin of error in all work done in this plant. We say, at present the car will go into the system and pass the Final Acceptance check on the repairmen's O.K. and that man has been working under a real pressure. Our request, in order to guard against any possible error, is return the Inspectors and we will be 100 per cent sure. Surely

for the sake of safety, you will go along with us on this point. Our concern is that someone, either in the Ford operation, or outside, will be killed or hurt by this neglect.

McKenzie, Company—We are prepared to go back out to the floor area and investigate this problem again.

Donegan, Union—I took the safety man down to this area and got him to write up the whole problem. I felt we would need this much proof to make you even start to move.

McKenzie, Company—I will arrange a meeting on the floor with the supervision concerned. For the Union, Jim Donegan can be there and I will represent Labour Relations.

October 19, 1966

I had a visit on the job from Mr. McGraw of the Labour Relations Safety staff, to whom I showed a further vehicle that had just been placed in the yard with safety defects and without the proper Procedure being used. Mr. McGraw then made inferences concerning my Safety Grievance to the effect that it may have been my fault, because I did not use the proper starting procedure. This of course I denied and reported the visit to my Union Representative. The Company's reply to my grievance and the inferences by Mr. McGraw clearly highlights the attitude of the Company towards the whole area of Safety. That attitude is, that I, the grievor, was wrong in starting the defective vehicle because in doing so, I opened the door on a lot of problems they did not wish to face.

The arranged meeting on the floor took place with the Company represented by Mr. McKenzie Industrial Relations, Mr. Campole, Manager of Quality Control and Mr. Kennedy, Manager of Safety. In spite of the many arguments put forward by the Union, the Company refused to return the Inspector to the hoists. They finally conceded however, that they would get an Inspector to look at a unit if it had a brake or steering linkage defect only. When Mr. McKenzie was asked why there was still an Inspector on the hoists on the other shift, he claimed that he was still there against the orders of Mr. Campole. The man was then removed.

October 25, 1966

The following are pertinent extracts from the minutes of a meeting between the Company and the Union Committee on October 25th. The Company representation was headed by Mr. Hallsworth, Director of Industrial Relations and Vice President of the Ford Motor Company.

Donegan Union: This Campole has not done anything to make this area safe. Someone is telling you a lot of lies and you had better straighten them out. You can never get 100 per cent perfect jobs off the end of the line and you know it. That is why we maintain the inspection has to be there to protect the public and our members.

McKenzie, Company: We have not really changed any method. The inspection was not there to check out repairmen's work. Repairmen must be responsible for their own work. Since you gave us such a pitch on safety, we have at least agreed to check this item—twice you have brought it to us.

Wheatley—Production Foreman (Rumbell) told me today the reason he wanted the inspector there was because he was needed. He was going to run it the way he wanted, for the job to be done right. The cars are not getting a pit inspection and are not safe. We don't know what state the cars are in, out in the lot, because they do not have a complete inspection.

Hallsworth, Director of Industrial Relations—You have made your point. There is a safety problem in finalizing and we are going to look at this again.

McKenzie, Company—I will not move from my position of 50 per cent and feel that we have really moved.

* * * * *

What was the outcome of all this effort to stem the tide of unsafe vehicles? Nothing. The Company did not even live up to their commitment on the partial check of brakes and steering. On Thursday last, for example, no less than thirty-two vehicles with one or more safety defects each, were sent into the Finalizing Area, and consequently to the dealers without the promised check by a hoist inspector, and three of those were not even repaired. These vehicles had such defects as:

- (A) Defective Brake Systems.
- (B) Starting in Gear.
- (C) Loose Motor Mounts.
- (D) Loose Steering Col Bolts.
- (E) Steering Operation Defective.
- (F) Gas Tanks Leaking.
- (G) Accelerator Sticking.
- (H) Defective Drive Shaft.

Are some vehicles with safety defects getting out of the Plant? Yes—with-
out a doubt, but how many I would not dare to speculate on.

Last week I picked up a vehicle ready for shipment to give it a special test and found it had no brakes. I immobilized the unit and informed the area supervisor who took charge of the keys. Within ten minutes the same vehicle was back in the shipping area with a driver ready to take it out the gate. It still had no brakes. I once again immobilized the unit and informed my Union Representative who went to a higher level of management than I did, and finally got the car repaired.

Before I left the Plant on the week-end I took a unit for a test and found three of the four nuts holding on the rear wheel was loose.

* * * * *

These problems that I have mentioned can only be solved if Quality Control is made an agent of the public's right to be protected, rather than it is now merely an aid to smooth Plant operation. Whether this is done within the Company framework or by direct governmental action is irrelevant, but done it should be.

Michael Heas
Local 707 U.A.W.

LIST OF PRODUCTION LINE SAFETY DEFECTS WHICH WERE
SHIPPED WITHOUT QUALITY CONTROL INSPECTION
ON FEBRUARY 23RD, 1967

Rotation No.	Defects	Repair Stamp	Inspection Stamp
198	No Brakes	OK	Nil
—	Loose Motor Mount	Nil	Nil
160	(A) Brakes Tight	OK	Nil
	(B) Gas Tank Leaks	OK	
	(C) Brake Failure Light 'On'	OK	
7073	Gas Tank Leaking	OK	Nil
173	No Brakes	OK	Nil
162	Loose Steering Column Bolts	OK	Nil
96	(A) No Brakes	OK	Nil
	(B) Starts in Gear	OK	
256	Starts in Gear	OK	Nil
264	No Brakes	OK	Nil
Serial No. 167730	'Reverses' in Neutral Gear	OK	Nil
Serial No. 166532	Brake Failure Light 'On'	OK	Nil
576	Drives in Neutral Gear	OK	Nil
972	Drives in Neutral Gear	OK	Nil
927	No Brakes	OK	Nil
113	No Brakes	OK	Nil
981	No Brakes	OK	Nil
156	Loose Steering Column Bolts	OK	Nil
658	Accelerator Sticks	OK	Nil
915	(A) No Brakes	OK	Nil
	(B) Starts in Gear	OK	Nil
	(Rev. in Park)	OK	
864	No Brakes	OK	Nil
—	Radiator Supports Loose	Nil	Nil
721	Loose Motor Mounts	OK	Nil
817	Steering Pulls to the Right	OK	Nil
6800	(A) Left Side Motor Mount Loose	OK	Nil
	(B) Suspension Blocks Not Removed	OK	Nil
593	(A) "Reverses" in Park	OK	Nil
	(B) Steering Shaft off Centre	OK	Nil
520	No Brakes	OK	Nil
644	Brake Line Damaged	OK	Nil
587	Starts in Gear	OK	Nil
298	No Brakes	OK	Nil
592	Accelerator Shaft Bent & Sticks	Nil	Nil
290	No Brakes	OK	Nil
744	Defective Drive Shaft	OK	Nil

BREAKDOWN OF DEFECTS

Type of Defect Items	Number
Defective Brake Systems	16
Starting in Gear	8
Loose Motor Mounts	3
Loose Steering Column Support Bolts	2
Steering Operation Defective	2
Gas Tanks Leaking	2
Accelerator Pedal Sticking	2
Defective Drive Shaft	1
Radiator Supports Loose	1

INDEX

MINUTES OF PROCEEDINGS AND EVIDENCE

relating to

the subject-matter consideration of

BILL C-105, ON ACT TO AMEND THE CRIMINAL CODE
(INSANITY)

BILL C-176, AN ACT TO AMEND THE CRIMINAL CODE
(INSANITY AT TIME OF TRIAL)

BILL C-176, AN ACT TO AMEND THE CRIMINAL CODE
(INSANITY AT TIME OF TRIAL)

Witnesses	Issue No.	Page Nos.
Dr. Barry Boyd	9	217-244
Canadian Mental Health Association	22	769-793
Dr. J. D. Griffin	22	769-793
Mr. Gowan T. Guest	22	769-793
Hon. J. C. McRuer	25	
Mr. John Munro, M.P.	9	217-244
Ontario Department of Health	9	217-244
Mr. Barry Swadron	9	217-244

Exhibits.

35. Report of the Royal Commission on the Law of Insanity as a Defence in Criminal Cases.

BILL C-105, AN ACT TO AMEND THE CRIMINAL CODE,
(INSANITY)

Witnesses	Issue Nos.	Page Nos.
Professor Stanley Beck	19	647-705
Mr. Andrew Brewin, M.P.	19	647-705
Hon. J. C. McRuer	25	
Professor Stuart Ryan	19	647-705

Appendices

	Issue No.	Page
12. "Criminal Insanity from M'Naghten to Durham" prepared by Library of Parliament	19	673
13. "Mental Abnormality and the Criminal Law" by Professor Stuart Ryan	19	688
14. "Alternatives to the M'Naghten Rules" by Professor Stanley Beck	19	701
17. Extract from Mental Disability and the Criminal Law pp 330-372.		
18. "M'Naghten vs Durham" by Lucien Panaccio, Extract from Canadian Psychiatric Association Journal, June 1964, Vol. 9, pp 227-231.		
19. United States vs Freeman, United States Court of Appeals—Second Circuit, Federal Reporter 2nd Series, Vol. 357, pp 606-629.		
35. Report of the Royal Commission on the Law of In- sanity as a Defence in Criminal Cases—October 25, 1956.		

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966-67

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 28

THURSDAY, MARCH 2, 1967
TUESDAY, MARCH 14, 1967

Respecting

Bill S-9, An Act to revise and consolidate the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act.

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WITNESSES:

From the Department of Justice: Messrs. D. S. Thorson, and R. Bédard, Associate Deputy Ministers; and Dr. P. M. Olivier, Parliamentary Counsel and Law Clerk.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—(24).

(Quorum 10)

Timothy D. Ray
Clerk of the Committee.

REPORT TO THE HOUSE

MARCH 15, 1967.

NINTH REPORT

Your Committee has considered Bill S-9, An Act to revise and consolidate the Interpretation Act and Amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act, and has agreed to report it without amendment.

A copy of the relevant Minutes of Proceedings and Evidence is appended.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, March 2, 1967.
(35)

The Standing Committee on Justice and Legal Affairs met this day at 11:30 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Gilbert, Grafftey, Guay, Latulippe, MacEwan, Mather, McQuaid, Tolmie, Wahn (12).

In attendance: From the Department of Justice: Mr. D. S. Thorson, Associate Deputy Minister.

The Chairman read the Order of Reference dated January 27, 1967, by which Bill S-9 was referred to the Committee, and called Clause 1. He then introduced Mr. D. S. Thorson who made a brief statement on the Bill.

*Agreed,—*That Clause 1 stand.

*Agreed,—*That Clauses 2 to 15 stand.

On a question by Mr. Cantin on Clause 2, paragraph (e), and Clause 11 French, it was suggested that Mr. R. Bédard, Associate Deputy Minister of Justice, be invited to be present at the next meeting.

At 12:30 p.m., the meeting adjourned to the call of the Chair.

TUESDAY, March 14, 1967.
(36)

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 11:00 a.m., this day, the following members were present: Messrs. Cameron (*High Park*), Cantin, Forest, Gilbert, Goyer, Guay, MacEwan, Mather, McQuaid (9).

At 11:45 a.m., there being no quorum, the meeting was postponed until 1:00 p.m. this same day.

TUESDAY, March 14, 1967.
(37)

The Standing Committee on Justice and Legal Affairs met this day at 1:15 p.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, Goyer, Guay, Honey, MacEwan, Mather, McQuaid, Tolmie, Whelan (13).

In attendance: From the Department of Justice: Mr. R. Bédard and Mr. D. S. Thorson, Associate Deputy Ministers.

Also in attendance: Dr. P. M. Ollivier, Parliamentary Counsel, and Law Clerk.

The Chairman introduced Mr. Thorson who introduced Mr. Bédard.

The Chairman called Clause 11 of Bill S-9. Mr. Bédard then commented on Clause 11 in reply to a previous question by Mr. Cantin on the use of the word *réparateurs* in French copy of the Bill.

Following discussion, it was moved by Mr. Goyer, seconded by Mr. Guay That Bill S-9 be referred back to the House.

Agreed—That the motion stand until the other clauses had been considered

Agreed—That Clause 11 stand.

Agreed—That Clauses 2 to 10 inclusive carry.

Agreed—That Clauses 12 to 15 inclusive carry.

Agreed—That Clauses 16 to 43 inclusive carry.

Agreed—That the schedule be the schedule to the Bill.

Agreed—That Clause 11 carry.

The question being called on the motion of Mr. Goyer, seconded by Mr. Guay,

That Bill S-9 be referred back to the House, it was negatived.

Agreed—That Clause 1 and the title carry.

Agreed—That the Bill carry without amendment.

Agreed—That the Chairman report the Bill to the House without amendment.

At 2:15 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY March 2, 1967.

The CHAIRMAN: Gentlemen, we have a quorum. Will you please come to order. The business before us is Bill No. S-9, an act to revise and consolidate the Interpretation Act and amendments thereto, and to effect certain consequential amendments to the Canada Evidence Act and the Bills of Exchange Act.

This bill was referred to the Standing Committee on Justice and Legal Affairs on Friday, January 27, 1967.

Mr. Donald Thorson, the Associate Deputy Minister of Justice, is here to explain the bill to us. I do not think I need to say more. You all have known Mr. Thorson personally for some considerable time and are well aware of his abilities and qualifications. Mr. Thorson, will you make your statement.

Mr. D. S. THORSON (*Associate Deputy Minister of Justice*): Thank you very much, Mr. Chairman. In the absence of the Minister of Justice, who I know had hoped to be present today to make an opening statement to the committee on the bill, I appreciate the opportunity of being allowed to say a few words about this bill, why it is being brought forward for your consideration and, I trust, approval at this particular time.

This bill, Mr. Chairman, proposes the first general revision of the Interpretation Act since Confederation. Over the past century the act has been amended on a number of occasions and these amendments have been consolidated in the general revisions of the statutes that have taken place from time to time, the most recent such revision having taken place in 1952. However, the act itself is still basically the same as the Interpretation Act that was enacted by Parliament as chapter 1 of the Statutes of 1867. The fact that an Interpretation Act was the very first act passed by the new Parliament of Canada after Confederation is perhaps some indication of the importance that the first Parliament attached to this kind of statute. The importance of the act over the years has not diminished and, if anything, the extent and scope of today's statute law makes a measure of this kind significantly more important today than in 1867.

The purpose of an interpretation act is to facilitate the drafting and understanding of statutes and other legal instruments. By establishing uniform definitions and expressions, and thereby eliminating the need for their constant repetition in the law, the drafting of statutes is simplified and their interpretation is facilitated. An interpretation act also serves the purpose of consolidating in one place rules of construction and interpretation that have been developed over the years both by the courts and by Parliament itself.

While the revised act proposed by this bill introduces some new provisions to aid in the interpretation of statutes and other legal instruments, it is essentially a rearrangement of the present act and a revision of the language thereof in accordance with modern drafting standards and practices. However, the new provisions that have been included in the act are expected to make the act even more useful and valuable. Provisions have been added, for example, to make clear that the Interpretation Act applies not only to acts of Parliament, but also to subordinate legislation of various kinds made under the authority of such acts. New provisions have been included in the act with respect to the computation of time, with respect to quorums, the appointment of public officers and with respect to a variety of other matters, all of which we hope will be of considerable help in assisting in the drafting and understanding of statutes.

Finally, I should like to point out that this legislation is intended to be of benefit not only to parliamentarians but also to the courts and, indeed, to all persons who must be concerned with the understanding and interpreting of statutes and regulations made by or under the authority of Parliament. The legislation is particularly timely for consideration during this present session of Parliament, inasmuch as some two years ago Parliament approved an act establishing a commission to revise and consolidate all of the public general statutes of Canada, and the work of that commission is now underway. It is important that this particular bill be dealt with as soon as possible in order that the work of the Commission may be proceeded with and concluded on the basis of the new act proposed by this bill.

Mr. Chairman, this bill is of a class that might be termed "lawyer's law" and is essentially, I think, a law, improvement measure. For this reason I think it is most appropriate that the bill come before this Committee where it can be given detailed study by those who are interested in its provisions. I, of course, will be available to the Committee to answer, as best I can, any questions concerning the bill, and to assist the committee in its deliberation on the bill.

The CHAIRMAN: We have no doubt about your ability to answer the questions. I am going to call clause 1 of the bill.

Mr. THORSON: Might I make one further remark, Mr. Chairman. Apart from any changes in the bill that the Committee might see fit to recommend, there are two or three very minor changes in the bill that I should like to suggest for the consideration of the Committee at the appropriate time. Two of these arise as a result of developments since June of last year, when the bill was approved by the senate, but if you agree, perhaps these might be dealt with when the clause in question are before the committee.

The CHAIRMAN: I think that may be better.

On clause 1—*Short title*.

The CHAIRMAN: I am calling clause 1 of the bill, and if the members have any questions to put on clause 1, I would ask them to do so at this time.

I am also going to suggest, after the questioning period is over that we go through it clause by clause, and if you have a question which relates to a certain clause, would you reserve it for that particular clause. Mr. Aiken, have you a question?

Mr. AIKEN: Mr. Chairman, I am sure that Mr. Thorson has read the commentaries on this bill in the *Canadian Bar Review*, which raises a number of questions. It is possible that he may be able to answer them during the general part of the discussion rather than when we get to the sections, because these are fundamental matters that were raised and I think we should satisfy ourselves about them.

The one question which this article raises is—why there is a new definition of enactment brought into the Interpretation Act. The fear seems to be that this will enlarge, or perhaps verify, executive powers that previously have been authorized only by statute. I am sure that we are all concerned about this. The article seems to fear that some prerogative or common law right, or right by custom, may be revived to permit the Governor General, on the recommendation of the Cabinet, to pass laws without the initial approval of Parliament. Could Mr. Thorson give us some answer to this particular question?

Mr. THORSON: Yes, Mr. Aiken. I think, with all respect to Mr. MacLaren's views as expressed in his article in the *Canadian Bar Review*, that he has misconceived the effect of the definition that is of particular concern to him, in section 2. The term "enactment" is defined in section 2 of this act solely for the purposes of the Interpretation Act; it does not, nor indeed can any definition, have the effect of expanding or contracting jurisdiction as such. The expression is used in the Interpretation Act merely as a convenient label to describe the kind of instruments to which the provisions of the Interpretation Act are intended to apply.

For example, where we speak of a rule of construction that is applicable to a particular enactment, rather than have to repeat the expression "act" or "regulation" and the various other instruments that are described in the term "regulation" defined in section 2, it is necessary only to use the one label, namely "enactment". It is merely a drafting label for convenience of reference and for convenience of understanding the scope and application of the act.

Mr. AIKEN: It seems reasonable to make the wording of the act more concise because certainly we, as lawyers, get awfully tired of hearing a series of words used in a statute or in a decision which are intended to be all-inclusive, but really include all shades of particular ideas. You are satisfied, and you can satisfy us, that there is no positive law being created; it is merely an interpretative law?

Mr. THORSON: Most definitely not, by the definitions contained in section 2 of the act. Of course there are affirmative rules of construction set out in the act itself, and that most assuredly is law; but we are not expanding the law merely by the definition of the term "enactment".

Mr. AIKEN: Is this the only place where these words make a new appearance in the Interpretation Act, so far as you know?

Mr. THORSON: May I take a random example, Mr. Aiken? Section 8 (1)—and there are many such examples scattered through the bill—says:

Every enactment applies to the whole of Canada, unless it is otherwise expressed therein.

Now, there is an illustration of a case where the term "enactment" is used. Again, if you would refer to section 3(1) of the bill:

Every provision of this Act extends and applies, unless a contrary intention appears,...

and those words are very important.

... to every enactment, whether enacted before or after the commencement of this act.

In other words, it is intended that the various rules of construction and interpretation set out in this act would apply not only to acts of Parliament but also to the subordinate legislation made under the authority of such acts. Without such a rule, I might say, there would be no regime of interpretation.

The CHAIRMAN: You are not going to leave us, are you? When we start passing this bill clause by clause we will need a quorum. If you are coming back, that is all right; we will go on with the evidence.

Mr. GRAFFTEY: Am I breaking up the quorum?

The CHAIRMAN: Well, it is broken now. We would like to recover a body.

Mr. AIKEN: We are scattering it?

Mr. GRAFFTEY: What is a quorum?

The CHAIRMAN: Ten. Proceed, Mr. Thorson.

Mr. THORSON: I am sorry; I am not sure where I was. I think I was making the point that in the absence of a provision such as that contained in section 3, read with the definition of what we mean by an enactment, there would be no regime of law applicable to the interpretation and construction of subordinate instruments of various kinds.

Mr. AIKEN: I have a second question, somewhat related, which I will pursue very briefly, and then perhaps someone else will want to ask further questions. The author of this article in the *Canadian Bar Review* asks why the following words in the present Interpretation Act, namely "in execution of any powers delegated by statute", are not included after the words "by or under the authority of the Governor in Council". He also seems to think that the limiting words that were originally in the Interpretation Act, which made it quite specific that the Governor General's authority only arose by any powers delegated by statute, were deleted and that for some reason or another by deleting them there may also be created a greater power in the executive branch than now exists.

Mr. THORSON: I think not, sir. Certainly the definition of a regulation, however that expression may be defined, cannot enlarge the scope of the Governor in Council's authority to make a regulation. What paragraph (e) is describing is the kind of instrument that is included in the expression "regulation". It deals, first of all, with instruments that are made or established in the execution of a power conferred by or under the authority of an act of Parliament and, secondly, with an instrument made or established by or under the authority of the Governor in Council. Now the latter would deal with instruments made by the Governor in Council in the exercise of the prerogative powers of the Crown and, not only that, would also cover instruments made by the Governor in Council otherwise than under a statute, for example, in the exercise of the Governor in Council's, what I might call, housekeeping responsibilities.

Mr. AIKEN: Well, would that include such things as dissolving Parliament proclamations and so on, which do not arise by statute?

Mr. THORSON: Oh no, it would not. That would not be covered, in my view, by either sub-paragraph (i) or sub-paragraph (ii) of paragraph (e).

Mr. AIKEN: Well, of course the word "proclamation" is used there; under paragraph (e), "regulation" includes a "proclamation".

Mr. THORSON: Yes, but I think the proclamation dissolving Parliament is a proclamation of the Governor General.

Mr. AIKEN: That is what I am getting at.

Mr. THORSON: The Governor General and not of the Governor in Council in the ordinary way.

Mr. AIKEN: Right. But, can you give examples of situations where the Governor General has the right to issue proclamations, not under the authority of an act of Parliament? Is this the one that I am referring to, a proclamation dissolving Parliament?

Mr. THORSON: We may be beyond the scope of paragraph (e), but a possible example would be the kind of royal proclamation that was issued a little more than a year ago, relating to the establishment of the national flag.

Mr. AIKEN: What I am trying to get at is this. What regulations would come under sub-paragraph (ii) of (e) in clause 2 here.

by or under the authority of the Governor in Council;

That is a regulation made by the Governor in Council which is not under the authority of an act. I just do not know where this authority would arise.

Mr. THORSON: Well again, it is intended to refer to instruments issued in the exercise of the prerogative; it is also intended to cover instruments issued by the Governor in Council in its capacity as an employer; for example, there are a great many orders, directions and so on, made by the Governor in Council as an employer. These do not derive directly from any statute; they are, in a sense, akin to management instructions or directives, and it is intended, since these apply to a great many people—it is considered desirable—that the rules set out here should govern the interpretation of such instruments.

Mr. AIKEN: Yes. Then, you can assure us that the elimination of these words enlarges the scope of the Interpretation Act but does not enlarge the law?

Mr. THORSON: I can give that assurance without qualification, sir.

Mr. AIKEN: Thank you.

The CHAIRMAN: Mr. Cantin?

Mr. CANTIN: I have just a few questions, sir, about the French version.

(Translation)

Mr. CANTIN: Do you speak French, Mr. Thorson?

Mr. THORSON: Just a little, sir.

(English)

Mr. CANTIN: First I want to make just a general observation. I will say it in English if you like. In respect of the French version it would be very difficult to express in French some of the English terms used here, and I was wondering how we could rectify that.

Mr. THORSON: I am not sure what example you have in mind.

Mr. CANTIN: Well, just as an example, I will take clause 2(b). We say, in French:

Édicter a entre autres le sens de lancer, de faire, d'établir.

The word "*lancer*" means to throw; you would not use that word, in English for "*édicter*". I think the real sense would be represented by "*promulguer*?" "*Lancer*" represents an action; it is an action word, meaning to throw something.

Mr. THORSON: I am perhaps—in fact, I am quite certain that I am—in an area which is beyond my competence to deal with. I would like to make one general observation concerning the preparation of the French version of the bill. A great deal of time was spent, because of the key importance of this bill in the preparation of the revised statutes, both in English and in French, to the working out of the French version of the Interpretation Act.

There is certainly no question of the French version of the Interpretation Act being merely a translation of the English version; is it not. It was prepared on a quite different basis, under a group of officers of the department of Justice, headed by Mr. Rodrigue Bédard, the Associate Deputy Minister of Justice.

A great deal of consideration was given to the use of expressions such as *édit* and to the other expressions found in the act. There may be some disagreement about whether those are the proper expressions to use, but I do know that the matter of the proper expressions to be used was very thoroughly canvassed and discussed by Mr. Bédard with his colleagues, and indeed with the Minister of Justice.

Mr. CANTIN: Would it be possible, Mr. Chairman, because we have some doubts about some of the interpretation, to have Mr. Bédard here so that we can question him about this version?

The CHAIRMAN: I think probably you have raised a very important point, and we will have to deal with it. I do not think we will have an opportunity of dealing with it this morning, by the proper process will be followed. If we have to go through it clause by clause in the French version, that is what we will have to do. So far as I know, I do not think that is the practice, but whatever is the proper course to pursue we certainly will pursue it. I would want to inform myself as to how we do this. Are there any other questions?

Mr. WAHN: Mr. Chairman, I also have been looking at this article written by Mr. Maclaren. He suggests that there is perhaps a conflict between clause 2 of this bill and clause 2 of the Regulations Act. Did you note that, Mr. Thorson?

Mr. THORSON: I did, sir. There certainly is a difference in wording.

Mr. WAHN: The Regulations Act is more restrictive.

Mr. THORSON: Yes. I would point out, however, that the definition of the word "*regulation*", where it appears in the Regulations Act, is solely for the purposes of that act and must be read into the context of the substantive requirements and obligations which that act imposes.

We are using the term "regulation" here again as a convenient label to describe these various items of what I might term subordinate legislation, or subordinate instruments made under the authority of an act of Parliament or in the exercise of the authority of the Governor in Council. I do not think the two cross at all; they are for quite different purposes.

Mr. WAHN: In other words, the Interpretation Act merely contemplates that there can be valid legal orders in council made otherwise than pursuant to statutes, as you have explained, and the Interpretation Act applied to them as well as to orders in council made pursuant to statutes?

Mr. THORSON: Yes. The rules of construction set out in this act would apply to all such instruments.

Mr. TOLMIE: Mr. Thorson, to your knowledge, have there been critical reviews of this Interpretation Act other than the one presently before us by Mr. Maclaren?

Mr. THORSON: No, sir, I am aware of no other critical comment. The bill has had a considerable amount of public exposure. I know that I personally have talked to a number of people, including members of law faculties, who have expressed the view that it was a very considerable improvement in the law.

The bill also, I might mention, was discussed in detail by me with the members of the Conference of Commissioners on Uniformity of Legislation last summer, on the occasion when the Commission was considering modifying its uniform Interpretation Act, which is fundamentally a provincial act for the use of the provinces, in line with the provisions of the proposed federal Interpretation Act.

Mr. TOLMIE: That is all I want to know. Thank you, Mr. Thorson.

The CHAIRMAN: Are there any other questions. Mr. Guay.

Translation)

Mr. GUAY: Mr. Chairman, I want to ask a question along the same lines as Mr. Cantin a few minutes ago when he spoke on the question of application, shall we say of general comments. Once again here is a word that is used the same in French as in English, section 2 (e) speaks of an instrument, a proclamation, an administrative statute, a resolution or other instrument "lancé" in French. I note the repetition of the word. I do not know how we can define instrument or instrument" in French. Is it to be understood in the notarial sense, as when we say that a notary instruments? It is very difficult to give a definition. In this case it much more physical than legal?

English)

Mr. THORSON: Yes, I agree. The term "instrument" is of course a generic word; it is not specific. It is deliberately selected here because it is a word of such wide meaning as to embrace all of the various kinds of things that are set out in the definition of "regulation." Whether the word selected in the French version of the bill is the best possible choice, frankly I do not feel that I am competent to say, sir. I hope it is.

The CHAIRMAN: Could we count on having the Associate Minister of Justice, Mr. Bédard appear, and give us the benefit of his opinion on it?

Mr. THORSON: I am sure, if that is the committee's wish, it could be arranged.

The CHAIRMAN: We have not a full quorum here. I do not know what our procedure should be. Perhaps, as Mr. Thorson suggested, we should have his Associate Deputy Minister of Justice here to answer the questions of Mr. Cantin and Mr. Guay. I do not know whether we are going to be able to get the other two members back to form a quorum. Perhaps we should just simply adjourn.

Clause 1 stood.

Mr. WAHN: I have an appointment for 12.30, Mr. Chairman.

The CHAIRMAN: I would be glad to have an expression of opinion. I do not know what we could do, if we continued to sit here, except go through the bill clause by clause. We now have nine.

Mr. TOLMIE: We would only have fifteen minutes, at the very most, Mr. Chairman, so I think perhaps we would be wise to adjourn.

Mr. AIKEN: I would suggest, Mr. Chairman, that we continue for another five or ten minutes and go through some of these clauses. Perhaps many of them are non-contentious and we could approve them.

The CHAIRMAN: I do not think we could pass them. Shall I call clause 2 and shall we have any discussion on clause 2?

Mr. AIKEN: I think we can proceed with discussion and get the approval of those who are here and, finally, pass them.

Mr. WAHN: Pass them en bloc?

Mr. AIKEN: Yes.

Mr. WAHN: We would need a quorum.

On clause 2—*Definitions*.

The CHAIRMAN: Is there any discussion on clause 2?

Mr. AIKEN: No, I think most of our discussion to date has been on clause 2. Mr. Chairman.

The CHAIRMAN: I think Mr. Thorson has a suggested amendment on clause 2.

Mr. AIKEN: Perhaps we might hear it.

Mr. THORSON: Mr. Chairman, I have a very minor suggested amendment. In line 21 of the English version of the bill there appears the word "instrument"; has been brought to my attention that in the enumeration of the various kinds of legal instruments that are grouped together for convenience of reference in the bill under the term "regulation" this word "instrument" is used twice. The proposed amendment would remove the first such reference, since it is the intention that the whole of the latter part of paragraph (e) commencing with the words:

or other instrument issued, made or established
and so on, should modify each of the various kinds of instrument enumerated in the opening part of the paragraph. The deletion of this word, where it first appears, would serve to remove any possibility of doubt as to the intended application of the concluding words.

The CHAIRMAN: Any further discussion on clause 2? Shall clause 2 stand?

Mr. CANTIN: The same exists in the French version?

Mr. THORSON: Yes.

The CHAIRMAN: We will stand clause 2.

Clause 2 stood.

Clause 3 stood.

On clause 4—*Enacting clause*.

Mr. AIKEN: I understand, as far as clause 4 is concerned, it is just a consolidation of former sections 5 and 6; there has been no change?

Mr. THORSON: That is correct.

The CHAIRMAN: Is there any further discussion on clause 4? If not, shall clause 4 stand?

Clause 4 stood.

On clause 5—*Royal assent and date of commencement*.

Mr. AIKEN: Mr. Chairman, sub-clauses (2) and (3) are new and perhaps Mr. Thorson might explain their provisions.

Mr. THORSON: Yes. As the explanatory note opposite the clause indicates, Mr. Aiken, it is often the case that in an act of Parliament it is stated that the act is to come into force on a day to be fixed by proclamation. Up until now, certainly, there has been no express statement that that provision would of itself speak immediately upon the royal assent being given to the bill, although such a rule has always been regarded as understood. We are merely stating the understood rule here.

Mr. AIKEN: In other words, when royal assent is given to a bill which does not come into effect until a later date, one part of it that does come into effect is that provision which authorizes—

Mr. THORSON: Yes, that is right. Sub-section (3) of the same section is an extension of that same provision.

Mr. AIKEN: So the same principle then is embodied in sub-section (3)?

Mr. THORSON: Yes.

The CHAIRMAN: Any further discussion on clause 5? If not, shall clause 5 stand?

Clause 5 stood.

On clause 6—*Operation when date fixed for commencement or repeal*.

Mr. AIKEN: Mr. Chairman, it says in the comment that clause 6 is the former clause 11 re-worded. I have not had an opportunity to check former clause 11 and clause 6. I wonder if Mr. Thorson can tell us what changes were actually made?

Mr. THORSON: Drafting simplifications, Mr. Aiken. A great many of the provisions in the present act, when we came to look at them in terms of this

proposed bill, have been re-written, simplified, re-arranged, where we thought desirable to do so. I can read you the text of the existing section 11, if you would wish me to do so.

Mr. AIKEN: Yes.

Mr. THORSON:

Where an act, or any Order in Council, order, warrant, scheme, letters patent, rule, regulation, or by-law, made, granted or issued, under a power conferred by an act (a) is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day;

(b) is expressed to expire, lapse or otherwise cease to have effect on a particular day, the same shall be construed as ceasing to have effect immediately on the commencement of the following day.

You can see that the modifications relate almost exclusively to the use of the term "enactment."

Mr. AIKEN: Yes. I did notice one change, though. The words "coming into force" which are in the new act are not in the old one. I wonder if there is any particular reason for the change? I was looking back to clause 2; I did not see any definition of "coming into force" and I wondered why that word was used?

Mr. THORSON: The present section 11 speaks of "where an act... is expressed to come into operation on a particular day". The expression used here "Where an enactment is expressed to come into force on a particular day" I think it is more apt to speak of an act of Parliament coming into force, which as you know, the standard terminology used, rather than coming into operation because the expression "coming into operation" is I think essentially ambiguous. Does it mean that the law is speaking, that it is operative, that it is the law of the land? What does it mean? "Coming into force", I think, has a very clear understood meaning whereas "operative" has a somewhat different meaning.

Mr. AIKEN: I wonder why the words "have effect" are used in the last half of this new section. The words just confuse me a bit. In one place it says "coming into force", and then the latter part is "cease to have effect", and there was different wording used in the original which was "come into operation", which strangely enough has been carried into the marginal note but not used anywhere else in the section.

Mr. THORSON: The expression "cease to have effect" is intended to be broad enough to deal not only with repeals but also with provisions that by their own terms have lapsed or have become inoperative. It is broader than repeal.

Mr. AIKEN: Thank you.

The CHAIRMAN: Any further discussion on clause 6? If not, shall clause stand?

Clause 6 stood.

Clause 7 stood.

On clause 8—*Enactments apply to all Canada.*

Mr. AIKEN: Mr. Chairman, here again I understand Clause 8 is really a re-enactment of clause 9 by reason of re-numbering.

Clause 8 stood.

Clause 9 stood.

On clause 10—*Law always speaking*.

Mr. AIKEN: There is no change here, apparently, from the previous bill.

Mr. THORSON: No substantial change, sir.

Mr. AIKEN: Is there any change?

Mr. THORSON: I would have to compare them word for word, because where we have indicated the source of the previous section we have not indicated that we have made no change whatever.

Mr. AIKEN: I may have been operating on a misunderstanding, because I was going on the understanding that where it says former section 10 that this is the same section without change.

Mr. THORSON: May I read from the explanatory note opposite page 1, Mr. Aiken, where we tried to explain the approach we were taking in the notes? The fourth paragraph reads as follows:

In the notes below, the references to sections are to sections of the present Interpretation Act. In many cases there has been some change in wording and minor alteration in scope. Substantial changes, and new provisions, are specially mentioned.

I will be glad to read you the exact language of the present section 10 for comparison purposes.

Mr. AIKEN: No, I do not think it will be necessary.

Mr. THORSON: I think it is almost identical.

Clause 10 stood.

On clause 11—*Enactments deemed remedial*.

Mr. GILBERT: Mr. Chairman, the notation has clause 11 as section 15, simplified. Is it just a change in wording, or is it an enlargement?

Mr. THORSON: No, I think it is not an enlargement, but rather a simplification. Shall I read you the existing one? It is considerably longer. This one is shorter.

Mr. GILBERT: It is not a restriction, in other words?

Mr. THORSON: No. It incorporates really only the operative part of the existing section 15.

Mr. AIKEN: I think it would be preferable if it could be read, because this is one of the clauses that Mr. MacLaren questioned.

Mr. THORSON: I would be very happy to read it. I am now reading the existing act, section 15:

Every act and every provision and enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of any

thing that Parliament deems to be for the public good, or to prevent or punish the doing of any thing that it deems contrary to the public good; and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the act and of such provision or enactment, according to its true intent, meaning and spirit.

Mr. AIKEN: The words "public good" have been eliminated from the new section. Can you give us any reason for this?

Mr. THORSON: Well, I think the present section has confused a great many people for a good many years. The essential element, of course, is to protect the rule under which it is deemed that legislation shall be construed as being remedial.

Mr. AIKEN: So that "public good" is a somewhat vague wording which one person might take in one sense and another in another, and the act is saying, read what the act says, apply to it a reasonable construction and try to find out what the objects of the bill are and give them the most liberal interpretation.

Mr. THORSON: That is correct.

Mr. AIKEN: The use of the words "public good" were consciously eliminated then?

Mr. THORSON: Yes, because of the confusion that has been expressed concerning this section over the years.

Mr. AIKEN: Has there been, as far as you know, any law on this particular usage.

Mr. THORSON: I believe so. I do not have a list of the cases on the section, but I know that it has been discussed and argued in the courts in a number of cases and has been a source of some mystification as to its true scope and application.

Mr. CANTIN: Do you not feel that every enactment is rather deemed to be *énonciateur* instead of remedial. Do you know what I mean? Do you see that?

Mr. THORSON: May I have the word *en français*?

(Translation)

Mr. CANTIN: In French, yes. Is the law not supposed to enunciate rather than remedy something?

(English)

Mr. THORSON: May I ask that that question be passed to Mr. Bédard.

The CHAIRMAN: Mr. Gilbert.

Mr. GILBERT: Mr. Thorson has answered the questions that were in my mind.

Clause 11 stood.

On clause 12—*Preamble part of enactment.*

Mr. AIKEN: Is there any substantial change in this in respect of preambles Preambles, and marginal notes as well, have always been a subject of quite considerable scrutiny because sometimes the marginal notes are the only thing that give you any idea of what was intended to enact.

Mr. THORSON: Mr. Aiken, there is no change here, from the present law. In the past in Canada the preamble has always been considered part of the enactment itself, and is used indeed by the courts very often as an aid to construction of detailed provisions of the enactment.

Mr. AIKEN: And there has been no change in either clauses 12 or 13?

Mr. THORSON: No.

Clause 12 stood.

Clause 13 stood.

On clause 14—*Application of interpretation provisions.*

Mr. AIKEN: Just on subclause (2), it says that this is former Section 2(3) re-worded. Does the re-wording make any substantial change in the act? Perhaps if Mr. Thorson has the original section 2(3), he could read it?

Mr. THORSON: Yes, it is some extension of the present law. The present section 2 subsection (3) reads as follows:

An interpretation section or provision in an act shall be read and construed as subject to the same exceptions as those contained in subsection (1).

Now that is referring to subsection (1) of section 2 of the present act, and there are in the present act a number of exceptions built in. For example, subsection 1 says:

Every provision of this act extends and applies to

(a) every Act of the Parliament of Canada... except in so far as any such provision

(i) is inconsistent with the intent or object of such Act,

(ii) would give to any word, expression or clause of any such Act an interpretation inconsistent with the context, or

(iii) is in any such act declared not applicable thereto.

So what I think we are doing here is merely attempting to assert the rule in a much more straight forward fashion.

Mr. AIKEN: In effect, any statute which expressly gives another interpretation will apply, rather than the Interpretation Act? If I may ask, with some danger of upsetting the original wording, is that what the intention is?

Mr. THORSON: Perhaps not quite. Let me illustrate. Let us suppose we have an act such as the Income Tax Act, which contains its own interpretation provisions. That will say "in this act" and then there will be an enumeration of expressions which are defined for the purposes of that act. This provision makes it unnecessary to say "in this act", unless the context otherwise requires, "the following words have the following meaning". That is unnecessary, and indeed we have not now for a number of years drafted statutes in that fashion. The rule in paragraph (b) is somewhat different. This deals with statutes that might be described as being *in pari materia* with the statute in which the interpretation section appears.

In other words, if you have, as an illustration, the expression "taxation year" which is defined in the Income Tax Act, then a bill to amend the Income

Tax Act it is entirely possible to use the expression "taxation year" without again defining it, because the two statutes are *in pari materia*.

Mr. GILBERT: Just for clarification, am I right in assuming that unless a contrary intention appears there is that presumption in every act unless it is specifically set forth that it is not?

Mr. THORSON: This particular provision refers to the interpretation section that appears in the individual act. It is not speaking now of the Interpretation Act; it is merely laying down a rule of construction for the interpretation section that appears in the individual act.

Mr. GILBERT: I understand.

The CHAIRMAN: Is there any further discussion?

Clause 14 stood.

Clause 15 stood.

Mr. AIKEN: It is nearly 12.30, Mr. Chairman.

The CHAIRMAN: Gentlemen, Mr. Aiken has noticed the clock; it is 12.30. Would you like to adjourn now?

Mr. AIKEN: I think, Mr. Chairman, for the purpose of the record, that before adjourning you should indicate that the committee has reviewed clauses 1 to 15 and that with the exception of clauses 1 and 11, for which some further explanation is required as to the usage of some expressions in the French, the others have been approved and that the explanation has been satisfactory.

The CHAIRMAN: That will appear on the record, as Mr. Aiken has stated it. It is not necessary for me to re-state it. I think we will all agree to that being the present situation.

Mr. CANTIN: It is with the exception of clauses 2 and clause 11, not clauses and 11.

The CHAIRMAN: Well that is the one that Mr. Aiken has noted.

Mr. AIKEN: I said clauses 1 and 11; I should have said clauses 2 and 11.

The CHAIRMAN: Agreed?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Thank you very very much, gentlemen. I am sorry that our quorum was broken. The meeting stands adjourned.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, March 14, 1967.

The CHAIRMAN: Gentlemen, we have a quorum. Our witnesses today are Mr. D. S. Thorson, Deputy Associate Minister of Justice and Mr. R. Bedard, who is also Deputy Associate Minister of Justice.

Mr. Thorson, you could probably introduce Mr. Bedard to the Committee a little better than I could, because you know a great deal more about him than I do. Having done that, will you then proceed with any statement you care to make.

Mr. D. S. THORSON (*Associate Deputy Minister, Department of Justice*): You will recall last week there were two points, I believe, that arose in connection with the French version of the bill, and a request was made that Mr. Bedard might attend today in order to offer his comments concerning them. I believe I mentioned the last time the Committee met that Mr. Bedard prepared the French version of the revised Interpretation Act.

The CHAIRMAN: Would you like to make any comments now, Mr. Bedard, about clause 11?

Mr. R. BEDARD (*Associate Deputy Minister, Department of Justice*): Yes. Thank you, Mr. Chairman.

(*Translation*)

I believe that there is a particular difficulty in this. And this difficulty is the following—

Mr. GOYER: I would like to say something before Mr. Bedard starts.

That is to the effect I would like that it should be clearly understood, that this is not a French version of the English text, this is not a priority language, would be treated as equals. This is only a practical matter. If there is some possibility in the translation from an English expression to the French expression, we have to take that into account when we accept the final text, which means that if we cannot find a real way of putting the English expression into French, we should also accept that there could be some French expressions that are really hard to translate into English. This cuts both ways.

(*English*)

Dr. P. M. OLLIVIER (*Parliamentary Counsel*): May I say a word on this?

The CHAIRMAN: Certainly, Mr. Ollivier.

Mr. OLLIVIER: When you say that the two versions are on an equal footing, that is true. They certainly are, except that if there is a diversion between the English text and the French text, then I think you should look at the intention of the legislation. It might happen, for instance, that if the English text said one thing and the French text said another, then the judge who has to interpret the

law will look at the intention of the legislation by first finding out in what language the law has been drafted.

Mr. THORSON: That would be only one circumstance that might guide him to the interpretation.

Mr. OLLIVIER: I am not talking about criminal law. In criminal law if you are condemned to ten years in the English version and five years in the French version, you can choose the French version! That I will admit but, on the other hand, if you have to find the intention of the legislation you will not find out by the debates in the house because that is not accepted in court. However, at least you can find out by the drafting what was meant. If it has been drafted in English you would perhaps give priority to the English version.

(Translation)

Mr. GOYER: I am not of the same opinion as Dr. Ollivier. The intent of the legislator is neither French nor English. I do not believe that the legislator as such speaks one language rather than another the intent is to see what we want really to achieve with the law, rather than what one language says or not. The French version may well describe what the legislator wanted to achieve better than the English text.

Dr. OLLIVIER: Very often we accept the French version in preference to the English version. I really did want to say that we cannot necessarily accept the French version in preference to the English one. If the English one is not very clear and the French is, then we will accept the French text, which is very clear, but if both of them are contradictory, one way of knowing exactly what was the intention of the legislator is to know in what language it was first written.

Mr. BÉDARD: But, Dr. Ollivier, there should not be any confusion between the intention of the draftsman and the intention of the legislator, i.e. between what the draftsman means and what the Senate and the House mean.

Dr. OLLIVIER: You confirm what I say, more or less, because in this case the law is much more often used in English than in French. The French is often a translation, it is official, I readily admit it.

Mr. BÉDARD: I am thinking of a recent judgment from the Chief Justice of the Exchequer Court. The Court went entirely according to the French text with regard to the meaning of "officer of the crown".

Dr. OLLIVIER: The French text was very, very clear in that case.

Mr. BÉDARD: When there is a definition between a civil servant and a Minister of the Crown.

Mr. CANTIN: I believe that those two opinions are not contradictory, there is not a question of priority but of equality in texts. We should see in each and every one of those texts, what is the intent, and what is said in all instances. This is the aim and the objective of our work here. But on this clause 11, I will have some other remarks to make later on.

Mr. BÉDARD: I believe that the question was very well put and I would illustrate it by the difficulties we had to express in French what was very easily said in English in clause 11. It was easy to do it in English because for our English-speaking colleagues, for the lawyers and all those we were dealing with

the old principles of administration that go back to 1884 and in their language, the expression "remedial" has a very specific sense, that has been accepted since then.

For us, we have tried to find a formula that would say the same thing, but in doing so we assumed that the French-speaking lawyers would also know that rule of interpretation that they have to find in the Common Law which has as much relevance for French as well as English-speaking lawyers when we refer to the interpretation of Federal law. He has to know that principle of interpretation that comes from the Common Law.

So, we have had difficulty with the translation of the expression "remedial". We did not think it was possible to have an entirely new clause in order to replace clause 11. There already had been preliminary steps taken and the English version seemed to be acceptable.

So, then, we had to find the right expression in international French in order to be able to say exactly the same thing in French as was being said in English. We discovered that though in French, the expression "remède" exists and has a meaning that is fairly close to the expression "remedy", though "remédiable" exists in French there is no adjective that means the same thing as "remedial". There is no such adjective in French, even though I had thought there was, because you use it and I used it when I was practising as a lawyer, but I never found that expression in a French dictionary when I looked for it. There is no such French word in the dictionary in the French language, in international French, "remédiateur" does not exist.

So we had to look for other translations with equivalent meanings, i.e. that would mean the same thing as "remedial", in English. Lexicographers such as Lraute or Kemner, gave us an equivalent "réparateur", "remedial legislation" translated by "réparateur". But there is no doubt that the expression does not give an equivalent concept in the mind of a French jurist and in that of a Canadian lawyer. This rule is a Common Law rule and Kemner observes that it and we gave to that expression "réparateur" or "réparatrice" a meaning that is slightly different than the usual meaning in French. But it is a word that you can find in the dictionary.

But in the Interpretation Act we can give practical meaning to a word that will have to be generally accepted. And that is the reason why we use "réparateur" which seemed to have a meaning very close to that of other meanings of "remedial" in order to express the same idea.

There is not a translation, because the translation would have necessitated a long series of words such as the Quebec lawmaker saw fit to use. We were not going to stay too close to the text, we used the international French expressing the same idea with a concise formula, as concise a formula as in the English text. These are the reasons why we used that expression.

(English)

The CHAIRMAN: Mr. Bédard were you in charge of supervising the French translation of this bill?

Mr. BÉDARD: I must say, Mr. Chairman, that the translation had already been made when it was decided that a committee composed of Mr. Ollivier, Mr.

Tasse and myself was to check the French version against the English version. What we were mainly worried about was that the two versions, from a lawyer's point of view, would not say exactly the same thing. We were not so worried about the French or English, but with one thing leading to another, we had to suggest to the official translators that they change certain expressions that had been used because we thought they did not express exactly the same idea in French as in English. This is how we happened to revise the translation as well and that is why I also claim that our work was not that of pure translation. We were trying to express in French exactly the same thing that the draftsmen had tried to convey in English.

Mr. GOYER: Could you point out the article with which you had difficulty in finding a good translation, because it is quite important. It is not an ordinary law that we are now working on.

Mr. BÉDARD: I must repeat that we were not trying to translate. Official translators had gone over the work and they had done a good translation, but certain expressions that were used did not express exactly the same thing in French as the corresponding expression did in English, and that is what we were worried about. We wanted to say exactly the same thing in French as was said in English.

(Translation)

Mr. CANTIN: Mr. Chairman, there is no doubt now in respect of the English expression "remedial". That old rule of the English goes back to 1884, but I believe that the French expression "réparateur", does convey exactly the same idea, the same concept. We have to remedy an abuse, but also to add an advantage, but in the expression "réparateur", we cannot really get the full meaning of providing an advantage, though, admittedly it could mean a remedy to an abuse. And that is the reason why I am not really convinced that the translation really gives the full meaning of the English text, the French text does not really give the full meaning, the full concept. I still am looking for an adequate translation however this is a question of procedure, I believe that some proposals were made for amendments to the English version. If the Committee were to agree to delay the study of the amendments and to deal with them at another session, I would have to object right away. I would like this to be studied in another session.

Then we will have full time to study in order to find the formulas in order to have the exact concept in both languages.

We should of course be practical. If we were to amend the bill and return it to the Senate it might delay the passage of the Act and do more harm than good.

However, if the Committee agrees to delay the consideration of the amendments to another session, I would be in agreement.

(English)

The CHAIRMAN: I was hoping that the Committee would be agreed, in view of what Mr. Bedard had said, that the purpose of the Committee meeting that he was discussing was to bring the idea that was conveyed in English as close as you could to conveying the same idea in the French language. I think he feels that accomplished that to a large degree, so that anyone reading it in French, a French jurist or a French lawyer practising law would get the same idea that

An English lawyer reading it in English would get from the section. That is what I thought the Committee was trying to do, but if they have not satisfied this Committee, then I presume there is nothing else to do but to try it over again. I would like Mr. Thorson to explain to the Committee, if he will, why there is some urgency about getting this bill passed. Whether that is relevant or not is another matter, but there is a certain amount of urgency about it. Perhaps you could explain that, Mr. Thorson.

Mr. THORSON: Yes, Mr. Chairman. Just to review very briefly the legislative history of this particular measure, I believe it was first put forward in the Senate in 1962. It was approved by the Senate in that year and was referred to the House of Commons, but it was late in 1962 and subsequent events overtook the Bill, as a result of which it died on the Order Paper at that time. That was early in the year 1963.

The bill was again introduced in the Senate in 1965, but it was not proceeded with because of the dissolution of parliament in the summer of that year. It was again introduced in the Senate in 1966, and was approved by the Senate on June 30 last year. The urgency, if I could describe it that way, and perhaps I am being too strong a word, results from the fact that we hope very much to complete the work of the Statute Revision Commission on the basis of this legislation. The Statute Revision Commission was established by an act of parliament some two years ago, and is currently engaged in the very massive task of revising and consolidating the Statutes of Canada.

We hope to achieve with this new Interpretation Act a uniformity of expression and style without changing in any way the meaning of the existing statute law, but it will enable us to proceed in a uniform and coherent manner in the work of the Statute Revision Commission. If the bill were not proceeded with now I am afraid there would be a serious delay, with consequences that I could not foresee in terms of the work of that commission.

(translation)

Mr. GOYER: Then, Mr. Chairman, all other considerations put aside, such as matters of equivalent translation, we are still facing the fact that if we put any amendment forward, relating to translation or to anything else, we are in for a great deal of trouble. Why should we be asked then to study the Bill? Let us take it and refer it back to the House in order to adopt it, because we are running out of time right now. This matter of translation could be important, because it is not simple law, it is a law of interpretation that can last for years and years to come. If there is a translation that does not exactly convey the idea in the makers' minds, I believe that we should accept this fact and refer the Bill to the Senate for consideration. If not, then let us be on an equal footing, be it for a question of translation, be it for a question of interpretation, or for any other consideration. Why put forward any amendment? I would move that we adopt the Bill as such.

(English)

The CHAIRMAN: Mr. Bedard, would you give us your thoughts on whether in the French translation the Committee, which are the ones who prepared the French version of it, have approximated as closely as it is possible to approximate in French the English thinking behind the English version?

Mr. BEDARD: This is my opinion, sir.

The CHAIRMAN: What is your opinion, Mr. Ollivier?

Mr. OLLIVIER: I agree with Mr. Bedard, and in answer to what Mr. Goyer says I think we have to balance one thing against the other. I also understand in the English version that we have two or three amendments which might improve the bill but which are not essential, and you must balance the essentiality of these amendments against the risk that you are taking—if you make amendments that are not absolutely essential—of having the bill delayed for another year, or something like that. After this session there will be another session and from what I understand, it will be quite soon. There will be sufficient time then to bring further amendments and you will not risk the possibility of this bill not going through at this session. I think it is extremely important that the bill should be considered now and not be amended unless it is absolutely essential that it should be amended, not only for the passage of the bill but for the work of the revision of the statutes.

The CHAIRMAN: Are there any other members who want to comment? Mr. Aiken.

Mr. AIKEN: Well, Mr. Chairman, I feel, as Dr. Ollivier has expressed it, that we should go through the bill as quickly as we can, making sure that we are satisfied that all the essential explanations have been made. As far as the French translations are concerned, I am no expert but I would say that after the official translators have done their best and the departmental officials and the Committee have done further work on revisions that we are almost obliged to accept what has been done unless something better can be supplied. I would like to see these statute revisions come out. I am sick and tired of looking through volumes of statutes to try to find out what the law is. I think we should support the purpose of this bill and get this statute revision going.

(Translation)

Mr. FOREST: I have the same idea as Dr. Ollivier. The expression "réparateur", is not an extraordinary expression. When we are talking about "remedial" we mean "improving" which is the intent here of that paragraph, but I do not think that this is such an essential element that should delay the passage of the bill, simply because we cannot find a better expression,

Mr. BÉDARD: Well, it is the meaning of the rule "réparer", repair, that exists in Common Law. We try to express exactly the same concept in French; the "remedy" a situation.

Mr. CANTIN: I understand, Mr. Bédard. Can we say that it should be enunciated "énonciateur" before "réparateur"?

Mr. BÉDARD: But there is only one characteristic that is given in Caluse 11. It should include the law, it should remedy.

Dr. OLLIVIER: We might think of a better translation. There is no Act which is actually permanent. The Parliament of Canada cannot be bound in advance within a month or two when amendments are brought to the English version, there is no accurate translation, we could translate it in another way. I come back to the fact that it is not so essential that it really should involve delaying the adoption of the Act.

(English)

The CHAIRMAN: Mr. Mather and Mr. Goyer have indicated they would like to comment.

Mr. MATHER: Mr. Chairman, I agree with Dr. Ollivier and Mr. Aiken on the matter of the importance of what we are trying to do. We should remember that we have already had two sets of experts, as I understand it, go over the problems raised by the translation. They are able people and they have done their best and their opinion apparently is that they could hardly do any more than has already been done. I would like to see us proceed with the bill clause by clause, in view of the length of time that it has taken parliament to act on this. If there are other changes to be made in the way of translation there will still be an opening for that, if need be, to be done. I would like to see us go ahead with this.

(Translation)

Mr. GOYER: Mr. Chairman, I certainly will not accept such a point of view that because experts have studied an Act that we, as legislators, should adopt it as it is. This is, I think, a poor principle. What are we doing here then? I have the greatest respect for experts, but I think it is our duty to study the bills which are put before us. However, in the circumstances, because of the remarks which have been made by experts, I would move that the bill be referred back to the House.

(English)

The CHAIRMAN: You have heard the motion. Do we have a seconder?

Mr. GUAY: I second the motion.

An hon. MEMBER: I do not know what the motion is.

The CHAIRMAN: It was moved by Mr. Goyer and seconded by Mr. Guay that the bill be referred back to the house. Is there any discussion?

Mr. AIKEN: Well, Mr. Chairman, I do not know what it means. Does it mean referred back to the house approved or referred back for some other reason?

The CHAIRMAN: Well, I think—

Mr. OLLIVIER: I do not know, but I imagine what Mr. Goyer means is that it should not be amended. I think you should at least go through the gesture of perhaps calling the clauses one by one.

(Translation)

Mr. GOYER: That is just the point.

(English)

The CHAIRMAN: I did not interpret it that way. I interpreted it that he meant that we do not deal with the bill. We refer it back and say that we have this problem and we cannot solve it.

Mr. AIKEN: Let us ask Mr. Goyer what he means.

(Translation)

Mr. GOYER: That is the point, Mr. Chairman. I do not think we should be involved in so much "red tape". We could study the bill clause by clause, but we now full well that no amendments will be brought up, and I do not want to get involved in that type of "red tape". We are being faced with an accomplished

fact, in that the least suggested amendment will make for a great deal of trouble. That I have no trouble in understanding. But, I believe, we could refer back the bill to the House stating that we did not consider it. In the House we will be told what we are being told today. We will be told that if any amendment is made to the Act, it will make for a great deal of complications. We will then be called upon to decide on that.

(English)

The CHAIRMAN: In other words, you do not want to refer it back without amendment, you want to refer it back—

Mr. AIKEN: Mr. Chairman, I do not know whether Mr. Goyer is really being serious or not. I would not agree with him at all. I think we have a duty to go through the bill and give it reasonable and fair scrutiny. If we should happen to find other matters which are not satisfactory to the Committee, then we will have to refer them back. All we have at the moment, really, is a question about a translation, and no better suggestion has been made. Perhaps we could stand that again until we finish the bill in case something better should be brought forward. I think we should now proceed to discuss the bill. It may be that there will be others and if there are I think we are duty bound to consider them.

(Translation)

Mr. CANTIN: We would have suggestions to make I believe, to improve the French text.

What we are saying now is this. If we bring amendments the Bill will have to be sent back to the Senate and it will be so delayed that considerable inconvenience may result. That is what we are discussing at the present time. We do have suggestions to make, we are ready to consider this clause by clause, and suggest amendments. If however, on the other hand, for the reasons you stated a while ago, the amendments which could be brought into the English text would have to be suspended to make for a more hasty adoption, we are ready to go along with that. I hope you are in agreement with what I have just said.

(English)

The CHAIRMAN: We will let Mr. Goyer's motion stand. At the previous meeting we went over clauses 2 to 15, subject to clause 11 standing. Shall clause 2 to 15 carry?

Clauses 2 to 15 inclusive agreed to.

Clauses 16 to 20 inclusive agreed to.

On clause 21—*Majorities*.

Mr. AIKEN: I would like to ask Mr. Thorson if there is any substantive change. I see that the explanation indicates that it is a new section 21 but it does not indicate exactly where the changes are. Could we have some explanation of this?

Mr. THORSON: Yes, indeed. Virtually the whole of this section is new. It is, I think, a good example of a section which we are including in the interpretation for the first time, and which will make unnecessary the enunciation in individual statutes of lengthy rules relating to quorums. The provision deals with two situations. One, where the membership of the association is fixed and the other

where the membership is within a range having a maximum or a minimum. In either of these two circumstances this section enunciates the quorum rule that will apply.

Mr. AIKEN: I have a further question. It may be there, but I do not see an exception made for a special enactment where a quorum is fixed by statute. Is there any provision for that?

Mr. THORSON: No.

Mr. AIKEN: Let us say that a board is set up with 15 members. The statute says that six shall form a quorum, provided that one of them is the president and the other is the vice president. Of course, that statute would stand, but I would have thought that the Interpretation Act would say, "save as expressly stated in an act constituting such board or commission", and I do not see those words.

Mr. THORSON: Yes. You are quite right, the individual statute would govern, and in those circumstances where a specific quorum rule was provided in the individual statute, the rule enunciated in subclause (2) of clause 21 of this bill would not apply. Now, the reason it was not considered necessary to say, "unless the contrary appears in the individual statute" is because all of the provisions of the Interpretation Act set out in this bill are governed by the same principles. Clause 3 of the bill provides that:

Every provision of this Act extends and applies, unless a contrary intention appears, to every enactment, whether enacted before or after the commencement of this Act.

So where you have a specific statute that will govern and this would not displace the rule in the specific statute.

Mr. AIKEN: Here again you are shortening the interpretation of the interpretation?

Mr. THORSON: That is exactly so.

The CHAIRMAN: Is there any further discussion?

Clauses 21 and 22 agreed to.

On clause 23—*Implied power respecting public officers.*

Mr. AIKEN: On clause 23, Mr. Thorson, it is stated that it is re-worded. Is it substantially the same as section 31(1)(k)?

Mr. THORSON: Yes, sir, it is. Shall I read section 31(1)(k)?

Mr. AIKEN: Yes.

Mr. THORSON: It states:

words authorizing the appointment of any public officer or functionary, or any deputy, include the power of removing or suspending him, re-appointing or re-instating him, or appointing another in his stead, in the discretion of the authority in whom the power of appointment is vested;

Mr. AIKEN: I wonder if the word "functionary" has disappeared from the terminology that you are using in the new section?

Mr. THORSON: Yes it has, but the words "public officer" are defined in section 2 of the Interpretation Act, so that wherever we use the term in the Interpretation Act it takes the meaning as set out in section 2.

Mr. AIKEN: So that this is really an instance of attempting to cut down the words, as you did in the original, public officer, functionary or public servant—or some such words—and combining them into one word which can appear in the statute to mean the whole group?

Mr. THORSON: Yes.

The CHAIRMAN: Shall clause 23 carry?

Clause 23 agreed to.

On clause 24—*Documentary evidence.*

Mr. TOLMIE: What is the reason for eliminating the words *prima facie* in clause 24? What is the purpose of this? It has been a long accepted legal term.

Mr. THORSON: Well, it is a very good legal expression to describe a quite precise situation. However, we have had trouble in the past with the expression. For example, it is used in a variety of ways. In some cases it is used to describe *prima facie* evidence and in other cases it is described as being *prima facie* proof. There have been arguments in the past in the house, and more particularly in the Senate, about the use of this expression. This rule attempts to provide a principle that would make the use of the term unnecessary. There would still be occasions, I would think, where it would be most desirable, but there is a way of avoiding its use if, indeed, the use of the expression results in ambiguity or lack of clarity.

Mr. AIKEN: I would like to ask a question, Mr. Chairman, on subclause (2) of clause 24. It seems to me to be very broad. It states:

Every copy of an enactment having printed thereon what purports to be the name or title of the Queen's Printer and Controller of Stationery shall be deemed to be a copy purporting to be printed by the Queen's Printer for Canada.

That is an absolute statement. Now, let us suppose that a magistrate or judge has good reason to believe that a document before him is a forgery. This clause says that as long as it has printed on it what appears to be the name or title of the Queen's Printer it is deemed to be just that. Is there any protection in such a case? In other words, if the magistrate said, "I think this is a forgery. I think it has been printed down the street and the name of the Queen's Printer has been put on it", the person producing it could say, "I do not want to hear that kind of an argument because it is deemed to be produced by the Queen's Printer and you cannot argue about it".

Mr. THORSON: May I draw your attention, Mr. Aiken, to the wording of subclause (2):

Every copy of an enactment having printed thereon what purports to be the name or title of the Queen's Printer . . . shall be deemed to be a copy purporting to be printed by the Queen's Printer for Canada.

In other words, the official formal title is the Queen's Printer and Controller of Stationery. That is the office established by statute, but in many cases the

statutes simply refer to the Queen's Printer or the Queen's Printer for Canada. This is to make it clear that the document is not defective within the Evidence Act rule but only by reason of the fact that the full and formal designation of the Queen's Printer does not appear in the document. I do not think it would have the effect of making what you describe as a forgery into a presumption of validity that the document was in fact printed by the officer mentioned here.

Mr. AIKEN: An absolute presumption.

Mr. HONEY: Mr. Chairman, do I take it that the purpose of subclause (2) is to provide for the use of the short form rather than to provide for the establishment of proof of a document in court?

Mr. THORSON: Yes. It does not have to do with proof of documents in court. It has to do with making sure that the use of the short form does not create difficulties by reason of the fact that it does not coincide with the official statutory designation of the office.

Mr. HONEY: Thank you.

Mr. AIKEN: I am still not quite happy about this because of the combination of subclauses (1) and (2). While I appreciate that subclause (2) was put there for the sole purpose of identification and not proof, it seems that subclause (1) would permit a person to produce as evidence of a statute a document that appears to be a public document, and subclause (1) would indicate that it is conclusive evidence.

Mr. THORSON: Oh, I do not think, sir, that is the effect of subclause (1) at all.

Mr. AIKEN: Well, I do not seem to have agreement on it. I thought that that was the intention of subclause (1).

Mr. THORSON: No. Suppose you have an enactment that provides something along the following lines; that every certificate of an analyst issued under an agricultural statute is evidence of the facts contained and set forth in the certificate. Now, the effect of subclause (1) would be that that document would be admissible in evidence and the facts alleged in the certificate would be deemed to be established in the absence of any evidence to the contrary; that is, if you had a statute saying that the certificate of the analyst is *prima facie* evidence of the allegations or facts contained therein.

Mr. AIKEN: All right. Well then, subclause (1) and subclause (2) have no relation to each other whatever. Is that a fair statement?

Mr. THORSON: That is correct, except that they are both evidence provisions.

Mr. AIKEN: This is what confused me. They have no apparent connection and I was relating subclause (2) to subclause (1) and using a statute as an example. With that explanation I pass.

Clauses 24 to 26 inclusive agreed to.

On clause 27—*Indictable and summary conviction offences*.

Mr. AIKEN: I wonder if Mr. Thorson would explain what is involved in clause 27. It says:

...revised to accord with the new *Criminal Code*.

Mr. THORSON: How would you like me to proceed, by going through the various paragraphs?

Mr. AIKEN: I would like to know what the essential change is from the former section 28.

Mr. THORSON: Would it be of assistance to you if I were to read the present section 28? I do not think we are doing anything dramatic here. What we are doing is using terms that follow from the summary conviction part of the *Criminal Code*.

Mr. AIKEN: It is merely a case of wording?

Mr. THORSON: Yes.

Mr. AIKEN: There is no substantive change in the law?

Mr. THORSON: Yes, there is one new paragraph. Clause 27(1)(c) is new. It reads:

(1) Where an enactment creates an offence,

(c) if the offence is one for which the offender may be prosecuted by indictment or for which he is punishable on summary conviction, no person shall be considered to have been convicted of an indictable offence by reason only of having been convicted of the offence on summary conviction.

That, I think, is new and self-explanatory.

Mr. AIKEN: I would just like to ask if there is any reason why that was brought in? Is there a precedent set in the case of someone who was convicted on a summary conviction where there was some belief that he might have been convicted indictable?

Mr. THORSON: No. We wanted to guard against an argument coming up, and it could come up under a statute such as an immigration act where there are special provisions applicable to persons who may have been convicted of an indictable offence. If you have an offence on which a person can be prosecuted either the one way or the other, then this makes quite certain that he is not regarded as having been convicted of an indictable offence by reason only of having been convicted of the offence on a summary conviction.

Mr. AIKEN: It is an indictable offence?

Mr. THORSON: Yes, it is a safeguarding provision.

The CHAIRMAN: Any further discussion?

Clauses 27 to 38 inclusive agreed to.

On Clause 39—*Effect of Demise*.

Mr. AIKEN: Could I ask what the present defects and omissions are in the Demise of the Crown Act, particularly if this clause 39 will effect any substantive change in that other act by reason of re-definition?

Mr. THORSON: No, sir, it makes no substantive change. It merely eliminates certain doubts that have been expressed on the statute. We are not changing it, we are clarifying the provision in a way that will serve to remove any doubts that have been expressed in the past on the statute. This one clause really

encompasses the whole of the Demise of the Crown Act, which is some five sections long, and we think it accomplishes everything that that act does but in a much more concise and economical fashion.

Clause 39 agreed to.

On Clause 40—*Acts of Canada*.

Mr. AIKEN: Mr. Chairman, were private acts of parliament not previously accepted without special pleading?

Mr. THORSON: By virtue of section 13 of the existing Interpretation Act they did not require to be specially pleaded. Section 13 provides as follows:

13. Every Act shall, unless by express provision it is declared to be a private Act, be deemed to be a public Act.

This is expressing it directly. We are saying that notice shall be taken directly of all public and private acts. These are readily available and this provision should create no difficulty. In fact, it does not change the law; it merely states the rule directly.

Clauses 40 to 43 inclusive agreed to.

The CHAIRMAN: Shall the schedule on page 22 be the schedule to the bill?

Agreed to.

The CHAIRMAN: I would now like to go back to Mr. Goyer's motion. I think you all understand it. Those in favour of—

An hon. MEMBER: There was no seconder.

The CHAIRMAN: Oh yes, Mr. Guay seconded it. What is your pleasure, gentlemen? Those in favour of the motion?

Mr. AIKEN: Mr. Chairman, we have not passed clause 11.

The CHAIRMAN: No.

Mr. AIKEN: It was reserved so that I could deal with it before we deal with the bill.

The CHAIRMAN: Whether I was putting the horse before the cart or the cart before the horse, I do not know.

Mr. CANTIN: We have no objection to that as it is as long as there is no amendment in the bill.

The CHAIRMAN: I take it that I have to in some way clear the record of Mr. Goyer's motion.

Mr. HONEY: Mr. Chairman, I think Mr. Goyer's motion is to report the bill, as I recall it, and the only thought I had in mind—

The CHAIRMAN: The motion was to refer it back.

Mr. HONEY: Yes, to refer it back to the house. In dealing with this I would like to say on the record that as a matter of principle I support Mr. Goyer and others who spoke in their concern about the matter of this committee apparently being hastened in its consideration. I do not think this should create any precedent and I would like to be on the record as opposed to the suggestion that the

bills before us should be considered so that there could be convenience afforded to other groups in the legislative process. But I do not think, and I agree with others, that in the whole context of this matter, and having gone through the bill and found no matters that we wished to amend, and with clause 11 being the only out-standing clause, I would hope that we could report the bill without amendment and that it would be agreed by Mr. Goyer and Mr. Guay, who seconded it, that they would withdraw their motion so that the record could be clear and the bill reported to the house without amendment.

The CHAIRMAN: Of course, they have just now left the committee.

Mr. WHELAN: There were no objections when you asked them to withdraw their motion.

The CHAIRMAN: I did not ask them to withdraw their motion.

Mr. WHELAN: What did you say about withdrawing it?

The CHAIRMAN: I said we would let it stand until we got to clause 11.

Mr. AIKEN: Mr. Chairman, as far as I am concerned if you put the motion I will vote against it because I did not know what it meant anyway. I still do not.

The CHAIRMAN: I think probably you are right, Mr. Aiken, and I should call clause 11 and then have the motion.

Shall clause 11 carry?

Clause 11 agreed to.

Mr. WHELAN: May I ask one question. What are the terms of reference for the bill from the House?

Mr. OLLIVIER: The terms of reference are simply that you shall consider this bill, and that is it. You have to consider it. You cannot return it without having considered it.

Mr. WHELAN: That is what I thought.

Mr. OLLIVIER: It would not be proper to return the bill without having considered it and made a report on it.

Mr. WHELAN: Then a motion would be out of order?

Mr. OLLIVIER: I would think so.

Mr. MATHER: Well, the chairman accepted the motion and I think we should vote on it and decide—

An hon. MEMBER: Vote on it.

The CHAIRMAN: Vote on it. Well, in favour? Opposed? I declare the motion lost.

Clause 1 agreed to.

Title agreed to.

The CHAIRMAN: Shall I report the bill without amendment?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: The meeting is adjourned. Thank you very much, gentlemen.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament

1966-67

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 29

THURSDAY, MARCH 16, 1967

Respecting the subject-matter of

Bill C-26, An Act to Amend the Criminal Code (Safety Devices for
Automotive Vehicles)Bill C-49, An Act to Amend the Criminal Code (Dangerous Motor
Vehicles), and

Private Members' Notices of Motion Nos. 26, 31, and 38,

INCLUDING

- 1) The Tenth Report to the House relating to the above.
- 2) Index to the Minutes of Proceedings and Evidence concerning
the above subject matter.

WITNESSES:

From *Chrysler of Canada Ltd.*: Mr. R. F. Kiborn, Secretary and Director of Legal Affairs; Mr. George Lacy, Chief Engineer and Director of Product; Mr. R. M. Bannatyne, Director of Quality and Reliability; Mr. C. R. Smith, Plant Manager, Passenger Car Assembly Plant, Windsor, Ont.

From *Ford Motor Company of Canada Ltd.*: Mr. Edward Mehrer, Manager, Oakville Assembly Plant; Mr. James Campoli, Quality Control Manager, Oakville Assembly Plant.

From *General Motors of Canada*: Mr. F. E. Conlin, Vice-President and Director of Manufacturing; Mr. E. R. S. McLaughlin, Director of Quality Control; Mr. A. S. Evans, General Superintendent, Passenger Car Assembly Plant; Mr. J. B. F. Richardson, General Superintendent, Truck Assembly Plant.

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—(24).

(Quorum 10)

Timothy D. Ray
Clerk of the Committee.

REPORT TO THE HOUSE

MARCH 21, 1967

TENTH REPORT

Your Committee had referred to it the subject-matter of Bill C-26, an Act to amend the Criminal Code (Safety Devices for Automotive Vehicles); Bill C-49, an Act to amend the Criminal Code (Dangerous Motor Vehicles); Private Members Notice of Motion Number 26: "That, in the opinion of this House, the Government should consider early action to provide or promote legislation having as its aim the inclusion, at the manufacturer's level, of new and effective safety features in motor vehicles produced in or imported into Canada"; Private Members Notice of Motion Number 31: "That, in the opinion of this House, the Government should, as soon as possible, create a Commission or Committee to inquire into the manufacturing of safer motor vehicles and that, subsequently, on production of the report of such Commission or Committee, it should take immediate steps toward the implementation thereof in order to assure that all scientifically proven safety features are incorporated on vehicles produced or imported for use in Canada and in order to halt the senseless and unnecessary slaughter of thousands of Canadians each year on our highways"; and Private Members Notice of Motion Number 38; the question of auto safety.

In considering the subject-matter of these Bills and Notices of Motion, your Committee held 15 formal meetings over the period May 5, 1966 to March 16, 1967. These included two meetings where your Committee sat at the University of Windsor, Windsor, Ontario. In addition, your Committee visited laboratory and automobile safety testing facilities at General Motors Corporation at Milford, Michigan, Ford Motor Company at Dearborn, Michigan, and Chrysler Motor Corporation at Highland Park, Michigan.

The following witnesses were heard during the formal proceedings: Mr. R. Southam, M.P.; Mr. Ian Wahn, M.P.; Mr. Barry Mather, M.P.; Mr. Heward Rafferty, M.P.; The Hon. C. M. Drury, Minister of Defence Production; Mr. P. Farmer of the Canadian Highway Safety Council; Messrs. Guy Renaud, J. G. McQueen, E. G. Paul, of the Canadian Automobile Association; Messrs. D. Wolow, J. E. Hanna, and J. A. Bancroft, of the Canadian Government Specifications Board; the Hon. Gordon E. Taylor, Minister of Highways, Government of the Province of Alberta; Messrs. K. B. Raham and W. S. Berry of American Motors Corporation; Messrs. G. A. Lacy, R. C. Haeusler, R. F. Keborn, R. M. Innatyne and C. R. Smith of Chrysler Corporation Limited; Messrs. W. Scott, R. Briggs, Carl Purdy, E. Mehrer and J. Campoli of Ford Motor Company; Mr. P. O'Callaghan of Kaiser Jeep of Canada Limited; Messrs W. A. Woodcock, A. Stonex, F. E. Conlin, E. R. S. McLaughlin, A. S. Evans and J. B. F. Richardson of General Motors Corporation; Mr. C. R. McMillan of Goodyear Tire

and Rubber Co.; Mr. William Dodge from the Canadian Labour Congress; and Messrs. Larry Sheffe, Charles Brooks, James Milne, Don Read and Michael Haes of the United Automotive Workers Union.

The following were printed as appendices to the Minutes of Proceedings and Evidence:

The Brief of Mr. Heward Grafftey, M.P.

The Synopsis of brief by Mr. Heward Grafftey.

The Resolution of Canadian Fire Marshals and Commissioners.

The Brief of Canadian Automobile Association.

Canadian Government Specifications Board draft Standards re automobiles, 97-GP-1 through 97-GP-27.

CGSB draft "guide on factors of automobile safety".

Canadian Labour Congress Brief of February 2, 1967.

Brief of Mr. James Milne, United Auto Workers Union.

Brief of Mr. Don Reid, United Auto Workers Union.

Brief of Mr. Michael Haes, United Auto Workers Union.

The following were made exhibits:

Bill (United States Senate) S 3005 regarding Safety Standards of Motor Vehicles—received from Senator Warren G. Magnuson, the Committee on Commerce, U.S. Senate.

Legislative Calendar, April 1, 1966 received from Senator Warren G. Magnuson, Chairman of the Committee on Commerce, U.S. Senate Committee on Commerce,

Traffic Safety Hearings, Committee on Commerce—received from Senator Warren G. Magnuson, Chairman of the Committee on Commerce, U.S. Senate.

1966 S.A.E. (Society of Automotive Engineers) Handbook.

Summaries obtained through the Canadian Government Specification Board of Motor Vehicle Safety legislation in England, France, United States, Germany, Italy and Japan and in the Canadian Provinces.

U.S. Department of Commerce, Initial Federal Motor Vehicle Safety Standards of February 1, 1967, received from Dr. Wm. Haddan, Jr., Administration, National Traffic Safety Agency.

Grievance No. 3-31108 at Chrysler Corp. of Canada Ltd. from UAW.

Inspection defect cards O. Assy, 7474-1, November, 1966, from UAW.

Inspection check list, 169128, and 166998, from UAW.

New Vehicle Starting Procedure, dated October 12, 1965 and December 1965, issued by A. A. McKenzie, Industrial Relations Manager, Ford Oakville.

Report dated November 1, 1966, signed by Mr. J. L. Coissie relating to inspection incident, from UAW.

Brief of Local 444, UAW, presented by Mr. Charles Brooks, President Local Union.

Agreement between Chrysler Canada Limited and UAW—Local 444, March 7, 1965.

Chrysler Assembly Inspection Travel Cards.

Chrysler Passenger Car Pre-Delivery Service Inspection.

Chrysler Organization Chart.

Procedure for the Safe Handling of Defective Power Assist Brake Units from Ford, dated October 1, 1965.

Safety Precaution—No Brake Vehicle sign from Ford.

Danger—"Do Not Drive" sign from Ford.

Danger—"Toe In" sign from Ford.

1967 Passenger Car Pre-Delivery Service Record from Ford.

1967 New Vehicle Pre-Delivery Inspection and Adjustment Check Sheet from General Motors.

Inspection Record Card from General Motors.

In the course of the hearings, evidence to the following effect was presented:

(1) Highway safety requires improvement in all of the following four factors, namely: (i) the driver, (ii) the highway, (iii) the vehicle produced by the automotive industry and (iv) proper maintenance of the vehicle by the owner.

While this report can deal with only one of these four factors, namely the vehicle produced by the automotive industry, the other factors are equally important.

(2) A great deal more can be done to design and equip motor vehicles (i) which will minimize the possibility of accidents happening, and (ii) which will protect the driver and passengers and highway users from the results of accidents when they do happen.

Particular attention should be paid to safety features which will minimize injury and death to the driver and passengers from the so-called second collision, i.e. the collision with the interior of the car and its contents which happens when a rapidly travelling vehicle is suddenly stopped.

(3) In recent years automotive manufacturers have increased very substantially expenditures on work and research for the purpose of designing and producing safer motor vehicles. This has coincided with increased public interest in the subject and with the United States Federal Legislation on motor vehicle safety.

On the whole, the Canadian automotive industry is doing a good job in producing a good quality motor vehicle at a reasonable cost to the Canadian purchaser. It is essential, however, that expenditures on work and research for the purpose of designing and producing a safer motor vehicle should continue to increase.

(4) Because of the close integration of the Canadian and American automotive industries, it is highly desirable that legislative safety requirements for motor vehicles should be uniform or nearly uniform in Canada and the United States. Because of United States federal legislation in the field, Canadian motor vehicle purchasers will automatically obtain the benefits of the additional safety features required by United States legislation.

Nevertheless, Canadian legislation to promote increased safety in motor vehicle design and equipment is desirable. Because of the great amount of interprovincial and international travel, it is desirable that the basic requirements should be imposed by federal rather than provincial legislation so that maximum uniformity and enforcement can be obtained.

The federal Department of Defence Production has already established the Canadian Government Specifications Board. This Board has produced a set of standards with regard to motor vehicles which are used in the purchasing of motor vehicles for federal government departments.

(5) Most other leading industrial countries have legislation on this subject. Such countries include England, France, United States, Germany, Italy and Japan.

Most of the Canadian provinces already have some legislation relating to motor vehicle safety including legislation relating to lights, reflectors, directional signals, windshield wipers, windshield defrosters, safety glass, mufflers, horns, rear view mirrors, brakes and warning devices for disabled vehicles.

(6) In the production of motor vehicles a very substantial amount of "lead time" is required. Design work on a particular model usually commences several years prior to the actual production of such a model. Accordingly the introduction of mandatory standards should give appropriate recognition to the lead time required to give effect to such standards with reasonable efficiency and economy.

(7) It is essential that federal legislation should be drafted bearing in mind the constitutional restrictions to which the federal parliament is subject. The field of criminal legislation is clearly within the exclusive legislative jurisdiction of the federal parliament. It is also believed that the regulation of motor vehicles used either interprovincially or internationally would also be subject to federal jurisdiction.

While it is believed that the federal government has adequate jurisdiction to carry out the recommendations set out below, it is recognized that any such legislation must be checked for constitutional validity by the Department of Justice.

Your Committee therefore makes the following recommendations:

(1) A public Board (which could be Canadian Government Specifications Board, Canadian Standards Association or new board) should be charged with the responsibility for developing at the earliest possible date, and improving from time to time, appropriate safety standards of design, construction and equipment for all motor vehicles produced in, or imported into, Canada and authorized for use in interprovincial or international transportation.

Vehicles not complying with such standards would not be permitted to be used in interprovincial or international transportation.

In order to promote maximum flexibility and design initiative, it is believed that, in general, it would be preferable for such standards to be in the nature of performance standards (i.e. that the vehicle comply with performance specifications) rather than that specific items of equipment be required.

In addition, this Board should have the following additional functions:

(a) To set appropriate standards of inspection and quality control and to see that they are observed by automotive producers and parts manufacturers;

(b) To initiate and supervise traffic safety research, possibly through the National Research Council; and

(c) To co-ordinate the activities of the many voluntary and governmental agencies now interested and involved in traffic safety, including those concerned with driver education, driver licensing, vehicle maintenance and inspection and highway improvement.

(2) While this Board should be established by federal legislation, it is essential that the co-operation of provincial governments, the automotive industry and the community should be obtained, and that the danger of bureaucratic control of a vital industry should be minimized. Provision should, therefore, be made for fair representation on the Board, of representatives of the major regions of Canada, namely the Atlantic Provinces, Quebec, Ontario and Western Canada (including the Territories) as well as representation from the industry and from the universities.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 3, 5, 7, 10, 11, 16, 18, 20, 21, 26, 27 and 29*) will be tabled later.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, March 16, 1967.

(38)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Choquette, Gilbert, Grafftey, Honey, MacEwan, Mather, Otto, Pugh, Tolmie, Wahn, Whelan (3).

In attendance: From Chrysler of Canada Ltd.: Mr. R. F. Kiborn, Secretary and Director of Legal Affairs; Mr. George A. Lacy, Chief Engineer and Director of Product; Mr. R. M. Bannatyne, Director of Quality and Reliability; Mr. C. R. Smith, Plant Manager, Passenger Car Assembly Plant, Windsor, Ontario.

From Ford Motor Company of Canada: Mr. Edward Mehrer, Manager, Oakville Assembly Plant; Mr. James Campoli, Quality Control Manager, Oakville Assembly Plant; Mr. William P. Park, Special Assistant to the President; Mr. Brent MacKeen, Executive Engineer; Mr. Alexander McKenzie, Manager, Industrial Relations, Oakville Assembly Plant.

From General Motors of Canada: Mr. F. E. Conlin, Vice-President and Director of Manufacturing; Mr. E. R. S. McLaughlin, Director of Quality Control; Mr. A. S. Evans, General Superintendent, Passenger Car Assembly Plant; Mr. J. F. Richardson, General Superintendent, Truck Assembly Plant.

The Chairman introduced the various officials present from Chrysler, Ford, and General Motors; and invited Mr. Kiborn of Chrysler to make his presentation.

Agreed,—That the Agreement between Chrysler Canada Limited and Chrysler Local 444, March 7, 1965; Chrysler Assembly Inspection Travel Cards; Chrysler Passenger Car Pre-Delivery Service Inspection; Chrysler Organization Chart; be made exhibits (See Exhibits 46, 47, 48, and 49 respectively).

Mr. Mehrer and Mr. Campoli of Ford were then invited to make their presentation.

Agreed,—That the following documents from Ford be made exhibits: Procedure for the Safe Handling of Defective Power Assist Brake Units, dated October 1, 1965 (See Exhibit 50); Safety Precaution—No Brake Vehicle sign (See Exhibit 51); Danger—Do Not Drive sign (See Exhibit 52); Danger—"Toe" sign (See Exhibit 53); and 1967 Passenger Car Pre-Delivery Service Record (See Exhibit 54).

Mr. Conlin and Mr. McLaughlin of General Motors were invited to make their presentation.

Agreed,—That the following documents from General Motors be made exhibits: 1967 New Vehicle Pre-Delivery Inspection and Adjustment Check Sheet (See Exhibit 55); and the Inspection Record Card (See Exhibit 56).

The Committee then proceeded to the questioning of the various witnesses present.

At 1.30 p.m., the questioning continuing, the meeting adjourned until after the "orders of the day", this same day.

AFTERNOON SITTING

(39)

The Standing Committee on Justice and Legal Affairs reconvened this day at 3.40 p.m. The Chairman, Mr. Cameron presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Choquette, Forest, Grafftey, Guay, Honey, MacEwan, Mather, McQuaid, Otto, Pugh, Tolmie, Wahn, Whelan (15).

In attendance: (same as at morning meeting).

The Committee resumed the questioning of the witnesses.

On a question by Mr. Tolmie, Chrysler, Ford, and General Motors indicated they would supply the Committee with figures showing comparative expenditures for inspection over the last three years.

At the conclusion of the questioning, the Chairman thanked the witnesses for their attendance before the Committee. The witnesses expressed their appreciation for the opportunity to appear before the Committee.

At 5.00 p.m., the meeting adjourned to the call of the Chair.

EVENING SITTING

(40)

The Standing Committee on Justice and Legal Affairs reconvened *in camera* this day at 8.45 p.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Choquette, Forest, Guay, Honey, MacEwan, McQuaid, Otto, Tolmie, Wahn (11).

The Chairman presented for the Committee's consideration the draft report of the Subcommittee on Agenda and Procedure relating to the subject matter of Bills C-26, C-49, and Private Members' Notices of Motion Nos. 26, 3, and 38.

On motion of Mr. Otto, seconded by Mr. Cantin,

Resolved,—That the draft report be adopted and be presented to the House as the Committee's Tenth Report.

At 9.05 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by electronic apparatus)

Thursday, March 16, 1967

The CHAIRMAN: Will the meeting please come to order. We have with us today Mr. Kiborn and Mr. Lacy from the Chrysler Corporation. Also in attendance from the Chrysler Corporation are Mr. Bannatyne and Mr. Smith.

From the General Motors Corporation we have Mr. Conlin, Mr. McLaughlin, Mr. Evans and Mr. Richardson.

From the Ford Motor Car Company of Canada we have Mr. Mehrer, Mr. James Campoli, Mr. Park, Mr. Brent MacKeen and Mr. Alexander McKenzie.

All these representatives have statements to make. I am going to ask Mr. Kiborn to give a preliminary statement on behalf of the Chrysler Corporation.

Mr. R. F. KIBORN (*Secretary and Director of Legal Affairs, Chrysler of Canada Ltd.*): Thank you very much, Mr. Chairman and honourable gentlemen.

I would like to elaborate for a moment on the people who are here with me today. Mr. Lacy, who was introduced, is our Chief Engineer and Director of Product; Mr. Bannatyne, on my right, is our director of Quality and Reliability, and Mr. Ray Smith is the manager of our passenger car assembly plant in Windsor.

We certainly appreciate this opportunity to respond to certain allegations made before this committee on March 1, concerning the quality, reliability and safety of our products, the components that go into them, the workmanship employed in their assembly, and the procedures by which components, workmanship and final products are approved for customer use.

This statement, which should not take more than ten minutes, outlines the operation of our Windsor passenger car assembly plant, the work assignment procedures, and our quality control program, which includes testing and inspecting.

The assignment of the Windsor passenger car assembly plant of Chrysler Canada Ltd. is to employ the best workmen available, and using materials and components that meet strict engineering specifications, produce passenger cars of such quality as to attract and hold the favor, approval and confidence of the motoring public.

The average length of service of assembly operators in this plant is eight years, and of inspectors, twelve years.

Regarding the quality of the cars produced by these employees, beginning with the 1963 model, four full years in advance of the industry as a whole, Chrysler demonstrated its confidence by providing a five-year/50,000-mile powertrain warranty.

As a further demonstration of this confidence, our present warranty, in which the five-fifty coverage has been extended to certain other components, also covers the rest of the car for two years or 24,000 miles.

Obviously, we can continue in business only so long as the buying public's confidence in our cars is maintained. Any suggestion that Chrysler Canada Ltd.—willingly and knowingly—would ship a car whose quality might jeopardise public confidence is unfounded.

Our present rate of production in Windsor is 752 cars per 16-hour, two-shift day.

The two shifts involve approximately 3,700 assembly operators, 218 line inspectors, and 42 more on other inspection duties. In addition, there are 42 salaried quality control personnel in the plant, for a total of 302 persons engaged in quality inspection and control.

In this regard, it should be noted that these manning totals are peculiar to the requirements of our particular operating processes and procedures, and bear no relation to those of any other plant.

At Chrysler each work assignment is determined by qualified industrial engineers.

At the beginning of a model run, 26 days are allotted to work familiarization. Gradually, during this period, normal line-speed is attained, and job assignments are checked and either verified or changed as conditions warrant.

Every job assignment is open to question by the Union under the terms of the contract. The Union maintains its own time-study expert in the plant, and can also call in qualified industrial engineers from the U.A.W. International.

Any dispute that cannot be settled by these means can be taken to arbitration which is binding in its decision.

This mechanism designed by the U.A.W. and agreed to by the company exists for the purpose of making sure that each job assignment is a reasonable one, and well within the capabilities of a trained man.

Mr. Chairman, I have brought a copy of our collective bargaining agreement and have noted section 27 which sets out the procedure whereby the work assignments are checked and either verified or changed as conditions warrant.

The CHAIRMAN: Is it agreed that a copy of their collective bargaining agreement be filed as an exhibit.

Some hon. MEMBERS: Agreed.

The CHAIRMAN: It will be filed as an exhibit.

Mr. KIBORN: So far during the current model year, as I say, only two instances have involved the bringing in of an expert from the U.A.W. International, and after examination both disputes were resolved with no appreciable change.

Now I would like to outline the measures we employ to ensure the quality of our products.

At Chrysler we believe that quality and safety must be designed and built into a car, that it cannot be inspected in.

To this end, our designers and engineers determine the specifications of every part that goes into our cars. They also determine the manner in which

those parts must be put together, right down to such things as the thickness of the paint, and the tightness of a nut.

Their specifications provide the starting point for our quality control program.

Contrary to what you may have heard, quality control at our plant is not regarded as a substitute for line inspection. Actually, inspection is only one facet of quality control. Total quality control is based on the concept of preventing mistakes. It emphasizes "before the fact" activities, while retaining inspection to monitor for effectiveness, and to identify for correction any unsatisfactory conditions.

The application of our quality control procedures begin with supplier surveillance, involving a study and evaluation of a supplier's quality control methods and his entire manufacturing capability, performed prior to any contract being let, and then on a continuing basis throughout the life of the contract.

Also, a continuing study of the quality of a supplier's output is conducted in conjunction with the supplier's own quality control personnel.

Scientifically accepted statistical sampling methods are used to provide a satisfactory level of test items from both in-process and finished production.

Next comes receiving and layout inspection, whose purpose is to determine the acceptability of all materials received at the plant. Again, statistical sampling methods are used.

The samples are checked against detailed characteristic sheets and are accepted or rejected on the basis of meeting our specifications.

As was indicated earlier, our line inspection involves 218 inspectors per day, or 109 per shift.

Before painting, the body of the car is inspected by 26 inspectors per shift for structure, welds, components, metal finish, alignments, fits and sealing.

In the paint and trim area, 36 inspectors check for paint and metal quality, underbody sealing, instrument panel build-up, electric circuits, torque or tightness of bolts, fit and general quality.

The next stage is the chassis area, where car and engine come together, the brakes, steering, transmission and other components are added. Here, where the car really comes into being, 28 inspectors check assembly.

From this point, the cars move into the car conditioning area where all necessary adjustments and repairs are carried out.

Each car is accompanied along the line by what we call travel cards, reflecting all inspections carried out in all areas through which the car has passed during manufacture.

In car conditioning, all adjustment or repair requirements noted on these travel cards are transferred to a final card which becomes the checklist for adjustments, repairs and subsequent inspection.

Mr. Chairman, I have brought along the travel cards, to which I referred; also, the final card which shows the inspection in each area of the plant and the final card to which anything not corrected is transferred for final repair. I would like to file these, with your permission, as an exhibit.

The CHAIRMAN: Is it agreed that the travel and final cards be made an exhibit.

Some hon. MEMBERS: Agreed.

Mr. KIBORN: After inspection and approval, each car moves then to the quality assurance line where it receives a complete re-check for electrical function, fit, appearance, wire routing, clips, underbody plugs, seals, all safety items and so on. In this car conditioning area there are 19 inspectors per shift.

Regarding safety items; on the main assembly line, as each safety item is checked it is identified as having been checked by the application of a dab of paint. So when the car receives its final pit inspection on a quality assurance line the re-checking of safety items simply involves making sure that there are paint dabs in all the right places.

By this time, each car has received approximately two hours and fifty minutes of inspection. But that is not all.

There is still our independent corporate quality audit, performed by specialists whose inspection includes partial tear down of okayed cars. They select a random five or more a day.

There is also the management test-drive program. Daily about ten cars are selected at random for road testing and general testing by management personnel from Product Engineering, Service, Manufacturing, Quality Control and Quality and Reliability departments.

We also have laboratories in Windsor and Detroit for detailed analysis and inspection. I believe some of you gentlemen viewed this on your visit to Detroit. Last year, our labs conducted 135,000 tests for Chrysler Canada.

At our proving ground, performance characteristics and component life cycles are studied under operating conditions.

Our pre-delivery service involves the checking, once again, of some 50 separate categories of component, before the car is finally delivered to a customer. This is part of the dealer's responsibility under the terms of his contract with Chrysler. A pre-delivery checklist is provided. Any unusual conditions discovered by the dealer are reported to the Company. These dealer reports are summarized on to a Field Service Report by our Service Department and forwarded to quality control for information, evaluation and appropriate action.

Mr. Chairman, with your permission, I would like to file a copy of the pre-delivery service inspection form.

The CHAIRMAN: Is it agreed that a copy of the pre-delivery service inspection form be filed as an exhibit?

Some hon. MEMBERS: Agreed.

Mr. HONEY: Does this exhibit which you have just filed apply to every car before it is delivered?

Mr. KIBORN: Yes, sir.

Mr. HONEY: That is fine.

Mr. KIBORN: When an out-of-town dealer arranges for a customer to take delivery of a car at the factory, we perform this pre-delivery service in the dealer's behalf, using the same check list and procedures he would follow. We also perform this service on cars for the government and other large volume buyers who require factory delivery.

We hope this helps to clear up the matter of a so-called "special inspection" option introduced to the public at your hearings on March 1.

Finally, in our quality control program, there is our new car warranty, which provides a continuing check on the manner in which our cars meet the demands of actual customer use. The malfunction of any part covered produces a warranty service report from the dealer, and this information also is fed back into the quality control system.

In summary, the inspection and reporting procedures by which we gather quality control data on our products extend from the supplier level, right through manufacturing to the actual expiry of the car's warranty.

All of this data is processed and applied to the continuing program of maintaining and improving the quality, reliability and safety of our products.

Now before I close I would like to make clear that in our plant, inspection does not come under the authority of production management.

Production workers respond through their supervisors to the Production Manager of our passenger car assembly plant.

Inspectors, through their supervisors, respond to the Manager of Quality Control in this plant.

Both managers have equal status, and both respond to the Plant Manager, Mr. Smith.

I have, Mr. Chairman, a copy of the organization chart for the car assembly plant which I would like to file with your Committee.

The CHAIRMAN: Is it agreed that a copy of the organization chart be filed as an exhibit?

Some hon. MEMBERS: Agreed.

Mr. KIBORN: Our overall Quality and Reliability program for Chrysler Canada Ltd. is under the direction of Mr. Bannatyne, who responds directly to the President of the company.

Now, one final item.

In our plant, no one—no matter what his rank—has the authority to approve for shipment *any* car on which inspectors have designated either a safety item or a functional item for adjustment or repair. All safety and functional items must be adjusted or repaired as indicated.

Mr. Chairman, and gentlemen, we hope that we have helped to give you perhaps a clearer picture of quality, safety and reliability as they relate to our passenger car assembly and inspection operations in Windsor.

As we are sure you appreciate, we have been the target of serious and possibly damaging accusations, and we regret very deeply that you should be required to determine their validity or lack of validity on the basis of brief presentations, rather than on the basis of a personal examination of the facilities and procedures we employ.

We thank you very much for your kind attention.

The CHAIRMAN: Thank you very much, Mr. Kiborn. I think that there are quite a few members who wish to ask questions. I was hoping that we might adopt the procedure of letting Mr. Mehrer, for the Ford Company, and Mr.

Conlin, for General Motors, present their statements before we get into general questioning. Is that agreeable?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Then, Mr. Mehrer is next.

Mr. EDWARD MEHRER (*Manager, Oakville Assembly Plant*): Mr. Chairman and honorable members of the Committee, I would like to introduce those who are with us from the Ford Motor Company. We have Mr. Bill Park, Assistant to the President of the Ford Motor Company of Canada Limited; Mr. Brent MacKeen, Chief Engineer of Ford Motor Company of Canada Limited; Mr. Alex McKenzie, Industrial Relations Manager of the Oakville Assembly plant, and Mr. J. Campoli, Quality Control Manager of the Oakville Assembly plant.

My name is Edward W. Mehrer. I am the plant manager of the Oakville assembly plant of Ford Motor Company of Canada, Limited. The Company has delegated to me full manufacturing responsibility for this plant which assembles passenger cars for the Canadian and United States markets.

Our submission today will be approximately 30 minutes in duration. It will be divided into two sections. First, in order to provide the Committee with important background, we will describe briefly our quality control inspection program as related to supplier and assembly operations. We will note especially the various organizational safeguards taken to ensure the priority of quality control procedures in our total complex. Second, we will reply to claims made before this Committee by certain UAW members on the subject of inspection.

First, let me position the quality control responsibility in our organizational structure. As plant manager, I have direct authority over both line and staff departments in the plant, a form of organization which has been in existence in our company since the end of World War II. Incidentally, I report directly to the President of the Ford Motor Company of Canada, Limited.

In our type of organizational structure, the term "line organization" refers to those production departments that have to do with the actual producing of the vehicle. The "staff" functions are those that perform services for or have control over the "line" functions. There are three staff functions that report directly to me, and over which no other individual has authority. These are the Industrial Relations Department, the Controller's Office, and most importantly, the Quality Control Department. There is no authority in the plant that by designation can influence or direct the Quality Control Department other than myself.

Every evaluation of my performance by the Company includes as a primary factor the measurement of my ability to produce a *quality* automobile. As a plant manager, I recognize and accept this responsibility. In view of the Company's commitments to customers through various extended warranty and sophisticated service programs, quality must be the first consideration in the assembly plants. The statement in the Brief submitted to the Committee by an Oakville employee that the Quality Control Department finds itself in a position of "errand boys" in deference to other elements of our operation is completely without foundation.

Within the framework of our organization the Quality Control Department has the direct responsibility to perform in-process inspections of all operations to determine their level of effectiveness; to perform receiving functions on incom-

ing material; to perform statistical audits on completed vehicles, weld inspection, torque controls, and many other areas of control.

It is also their complete responsibility to assure me that all vehicles delivered from the Oakville assembly plant are as free of defects as it is humanly possible for them to be.

To this end, no car is delivered from our plant without a clearance inspection from the final release inspectors. The motivation of our entire organization is centered around our quality image. I resent any implication that the vast majority of our employees do not contribute importantly to this concept.

In order to clarify our methods of inspection, I will now ask Mr. James Campoli, quality control manager of the Oakville assembly plant—who works under my direct supervision—to give you a brief summary of his responsibilities. I regret that the Committee was not able to accept our invitation to visit Oakville to view our quality control program in person. However, hopefully Mr. Campoli's review will whet your interest sufficiently to reconsider your decision and agree to pay us a visit.

Mr. James CAMPOLI (*Quality Control Manager, Oakville Assembly Plant*): Mr. Chairman and gentlemen. At Ford Motor Company we have a completely comprehensive quality control program. I would like to take a few minutes to review this with you as it pertains to our control of products and suppliers and to our plants.

As background, I would first like to briefly define the major elements of our program: supplier quality assurance, in-process quality assurance, final acceptance inspection, customer acceptance inspection and final vehicle evaluation.

Supplier quality assurance controls the quality of parts released by suppliers for assembly into the end product; in-process quality assurance controls the quality of assembly within plant departments; final acceptance inspection evaluates the over-all quality of completed vehicles; customer acceptance is another evaluation of the completed vehicle prior to shipment; and final vehicle evaluation is the review of randomly selected units by assembly plant personnel to evaluate the effectiveness of all preceding controls. Each element functions to provide a positive feedback of data from each control point to the activity responsible for taking improvement action, thereby giving us a fully integrated program.

Our program begins with the supplier quality assurance activity which was initiated in 1959 and is directed towards developing in each supplier source a total capability and integrity for consistently producing and controlling parts to engineering specifications. The prime objectives are:

1. To establish a recognition of quality responsibility by each source and to assist each source in attaining self-sufficiency in fulfilling its quality responsibility.
2. To establish a parts quality control system which incorporates firm, decisive corrective action at the supplier source.
3. To establish a parts quality system which readily permits accumulation of a quality history for each source to be used by quality control and purchasing for programmed source improvement and, as necessary, in reaching decisions to source or resource parts to reliable companies.

In essence, this program is carried out by having technically qualified specialists review the capability of a potential supplier to produce quality products to engineering specifications. This supplier review includes analysis of his overall facilities, management, quality control, tooling, gauging and testing programs.

Quality control, purchasing, manufacturing engineering and product engineering activities all participate in this review.

When the contract has been confirmed with a supplier, our supplier quality assurance representatives then physically review finished products in the supplier's plant as produced under normal production conditions. This review will include dimensional, appearance, chemical and metallurgical characteristics as well as adherence to specified performance and durability requirements.

Suppliers are permitted to ship initial production shipments to our plants only when supplier quality assurance representatives indicate total acceptance following their reviews. In addition to the review of initially produced parts at the supplier plants, durability and functional testing of these parts is conducted in our plants through manufacturing engineering, product engineering, production and faulty control activities. There is constant surveillance of our supplies during the model year by the quality assurance representative. Based on our experience to date, we are convinced supplier quality assurance is a sound logical and dividend-paying approach, and by far the best technique yet devised to provide supplier self-sufficiency for quality.

Supplementary to the supplier quality assurance program is our Oakville assembly plant receiving inspection department. This activity performs quality reviews of specific production shipments as received and resolves any quality problems that may arise through the use of supplier materials.

After material enters the Oakville plant the plant quality control procedure and inspections, as I will outline, take place. These will be described in chronological order as a vehicle would actually be built.

The body components are framed into a body and a number of inspections are performed during this time. Some inspections are by surveillance to provide a check of tool performance and assure continued quality build—others are 10 per cent to provide a check on operators' work.

The welding program inspection procedures are designed to accomplish the following:

1. To provide a check of tool performance and maintenance;
2. To provide a check of operators' performance;
3. To provide a method by which defective assemblies can be repaired prior to leaving the department.

These objectives are accomplished by inspectors on a surveillance type of operation for spot welding, physically checking the security of welds. We completely destroy a body on a weekly basis to evaluate spot welding and fusion welding effectiveness. Arc and braze operations are inspected 100% on each unit.

Of the inspectors who are on a surveillance type of operation, their workload is divided so that welds of a critical nature can be checked on an hourly basis. In this manner, if defects are found, the defective assemblies can be repaired prior to leaving the department. Welds of a less critical nature are

checked on a schedule that varies with problem severity or with the history of a particular operation. All welding operations, from our initial operation to a completed body, are checked and problems are corrected as they occur.

Bodies and major sub-assemblies are checked dimensionally on a schedule to assure conformance to specification. These checks provide:

1. A check of tool performance
2. Information to process engineers to define the problems for correction
3. A check on operator control defects.

Toolmakers are assigned full time to perform a dimensional review to assure that all engineering and specifications are adhered to on:

1. Senior side assemblies
2. Compact side assemblies
3. Front structure assemblies
4. Completed bodies on a layout plate

Metal finish, fits, and specification checks are controlled by inspection stations. The procedures adopted are designed to identify and repair defects detected, prior to any body leaving the department.

During these inspections we check front and rear doors and decklid for fit, arc and braze operations and metal finish defects. Each unit is also checked for specification defects and for items repaired from the previous stations.

All of the other departments have this same basic type of in-process inspection which is inspection of 100 per cent of the units for the elements to be checked at the respective stations. For purpose of brevity I will only highlight areas in each of the other departments.

In the paint department each unit is checked visually to assure the paint application meets all our requirements. In addition, instrument checks are made daily to verify that proper film thickness is maintained.

Each day humidity or salt spray checks are performed on bodies and all other painted parts. These parts, after being subjected to these tests, are evaluated by the quality control supervisor and process engineer. These tests are designed to show up latent defects.

In the trim department, as at each other inspection station in the plant, the inspector has written instructions as to what is to be inspected and how it is to be done. All the inspectors in this department are line inspectors which mean they perform their inspection operation on each unit which passes their station.

An example of the trim inspection stations is the electrical station—four inspectors working as two teams of two men and using electrical testing equipment make functional checks of each unit. All our in-process inspectors received special training at model start-up to ensure their full knowledge of their jobs.

The final assembly department has a combination of surveillance and line inspection. Again the surveillance operations are those where the tooling is the item being controlled, such as torque guns.

A typical inspection station in this department is on the frame line where each frame is inspected for all work done on the front end of the frame to ensure

all parts are correctly assembled. Safety items such as steering linkage cotter keys are marked with a paint stick. This ensures that these items have in fact been looked at.

Each unit is given a complete roadability test on a set of rollers. This test checks the engine, transmission, driveshaft and axle at highway speeds. Brakes, parking brake, lighting system, horn, speedometer and all gauges are tested at this station.

After the unit is complete on the final assembly line it is routed to our final acceptance line where each unit is checked for functional electrical and interior and exterior appearance items. Defects noted are recorded and repaired. When all repairs are completed, each unit is given a water test.

At this point, the unit would be ready for shipment, but we take one more look on our customer acceptance line which again is a complete check of inspect as many as four times. There are many other quality programs in addition to what I have recounted here, such as resident engineering vehicle evaluation, warranty reduction programs and automotive assembly division evaluation of Oakville vehicles on a regular basis.

In conclusion, as I stated at the beginning of this presentation, we have a most comprehensive quality control program. As previously stated by Mr. Mehrer, vehicles delivered from our plants are as free of defects as it is humanly possible to be.

I should also mention almost all of our vehicles are delivered through a Ford or Mercury dealer who carries out a New Vehicle. Pre-Delivery Inspection and Adjustment Check with particular emphasis on safety items. This procedure is specified by the Company, takes about 4 hours and is another safeguard to assure customers get a top quality product. Thank you.

The CHAIRMAN: I notice, Mr. Campoli, you have

Pre-Delivery Service Record Card attached.

Would you like that filed as an exhibit?

Mr. CAMPOLI: Yes, please.

The CHAIRMAN: Then I will just detach it.

An hon. MEMBER: There are a number of things.

The CHAIRMAN: Yes, there were three items mentioned: New Vehicles Starting Procedures, Finalizing area, and so on. Do you want these filed as exhibits?

Mr. CAMPOLI: Yes, please.

The CHAIRMAN: All right. Mr. Mehrer.

Mr. E. W. MEHRER (*Plant Manager, Oakville Assembly Plant*): Thank you Mr. Campoli.

We will now respond to claims made before this Committee regarding quality control inspection procedures.

I am looking at a submission entitled "The Ineffectiveness of the Quality Control Department in Controlling Safety Standards at Ford Oakville".

On Page 2, reference is made to repair and inspection procedures in the hoist area. Here, responsibility for vehicle clearance has been assigned to repair-

men, for a very practical reason. The people employed in this area are specialists with an accepted background of performance in their classification. As such, it is necessary for them to have a high level of experience in automotive mechanics. It is my judgment that these employees are highly qualified and very capable of assuming the responsibility for the work that they perform. Furthermore, this work is done in a stationary position so that they, and not the assembly line, are in complete control of the speed with which they perform these repairs. We have placed on these individuals the responsibility to repair and certify any work they perform. Constant management attention is expended to assure ourselves that this situation is under complete control and, as I mentioned, after this every vehicle that leaves the plant is re-inspected on our final acceptance line and released only by an inspector's stamp.

Also, on page 2 of this brief, reference is made to the most unfortunate death of Mr. John Scullion who was killed by a moving vehicle in our final repair area during the 1966 launching period. This man's death was caused when employees failed to follow established plant safety practices. Subsequently, modified and expanded safety procedures were put into effect which were designed to further reduce the possibility of an accident in the event of any failure on the part of plant personnel.

The statement that new safety rules which were issued following this accident were later changed to accommodate to the expediciencies of production is definitely not true. The instructions referred to are identified within our Company as "New Vehicle Starting Procedures". I believe you have those, on submission?

The CHAIRMAN: Yes.

Mr. MEHRER: The instructions were revised to recognize the different types of conveyors between the final assembly and the vehicle finalizing areas and to make them more inclusive and more demanding in an effort to assure ourselves that an accident such as this would never again happen in our plant.

Pages 3, 4, 5 and 6 of this brief deal primarily with a safety grievance submitted by Mr. Michael Heas. I wish to point out that Mr. Heas is classified as an Inspector—Finished Vehicle. His prime responsibility is the inspection of units off the final assembly line and through the vehicle finalizing area with the object of identifying any quality defects on the unit that require corrective action. The majority of his work is carried out within the final inspection area of the plant. It is in this general area where the hoist repair activity is located and where vehicles are forwarded from the final assembly line in the event that certain major hoist type of repair is required. In view of this, it is obvious that at any given time during production hours there will be a number of units stationed in the area awaiting process through the hoist repair. It should be noted also that in replying to Mr. Heas's grievance, his supervisor specifically referred to the "New Vehicle Starting Procedure" which Mr. Heas should have followed on the morning of October 12th and, had he done so, he would have been aware of the 'no brake' situation which he mentions and thus he would not have attempted to start the vehicle.

Through the remaining pages, Mr. Heas has made reference to further discussions between Company and Union representatives concerning the hoist

repair activity. As I stated previously, these types of repair are assigned to Repairmen—General Vehicle who are specialists in this work with a proven background of experience and performance. Each repairman signs off on the inspection card in relation to the repair which he has effected and is held responsible by the Company for the adequacies of these repairs. I would like to emphasize, again, that after this the units are still checked off by a final release inspector before delivery to the release gate.

On page 7 of the brief, the claim is made that 32 vehicles were sent out of the plant with a number of defects which were listed on an attachment to the brief, the inference being that the defects listed had not been repaired. That is definitely not so. Each of these repairs was made by a Repairman—General Vehicle and the inspection card concerned carries his stamp certifying to the repair having been made. I wish to emphasize that these vehicles did not get shipped to dealers and customers with these quality defects.

Also on page 7 of the brief, reference is made to a unit being found last week in the shipping area with faulty brakes and reference is also made to finding a rear wheel of a unit with three of the four wheel nuts loose. I am unable to provide specific detail in relation to these because of not having unit or rotation numbers. However, I do wish to emphasize that we have a most comprehensive in-process and final vehicle checking procedure, all of which is designed to ensure, so far as is humanly possible, that every vehicle shipped is free of defect.

Now let me proceed to the second brief, which has no heading.

On page 2, the claim is made that the assembly worker does not have adequate time to perform the work required of him, thus jeopardizing quality. I will reply to this claim by explaining to the Committee safeguards which ensure against such a possibility.

First, we employ specialists in an Industrial Engineering Department, who have the responsibility to observe and correct, if necessary, any areas where there is a suspicion of an excess workload. We do not consider that our employees are overworked.

Second, the Collective Agreement with Local 707, UAW, at Oakville contains an Article dealing with production standards. That Article establishes that when time studies are made, they shall be made on the basis of fairness and equity and shall recognize the required quality of workmanship, the efficiency of operations, and the reasonable working capacity of normally experienced operators. The grievances referred to in this brief on pages, 3, 6 and 8 were submitted and effectively resolved in accordance with the special grievance procedure contained in that production standards Article.

Mr. Chairman and members of the Committee, this completes our formal presentation. We will be pleased to answer any questions or provide the Committee with details of our quality control program which time has not permitted us to deal with today. I would like again to express our sincere hope that you will reconsider your decision not to visit our plant. Our invitation to you to conduct a thorough on-the-spot study of our procedures for quality control stands. Thank you very much.

The CHAIRMAN: I may say that we would have liked very much to visit all of the plants, and I am sure that it would have been very beneficial. However, this session of parliament has been going on since January of 1966 and we all hope it is coming to an end in the not too distant future. As Chairman, I took the responsibility of declining the invitation because I felt that the members would not have time to visit the different plants in question. We certainly would have liked very much to have been able to accept your invitation, and I hope you will understand why I felt, at least, it was not possible for us to do so. I shall now call upon Mr. Conlin from the General Motors Corporation.

Mr. F. E. CONLIN (*Vice President and Director of Manufacturing*): Thank you. Mr. Chairman, honourable members and gentlemen, my name is F. E. Conlin. I am vice president and director of manufacturing of General Motors of Canada. I was born in Oshawa and have been with our company for more than 40 years.

With me today, are three of my General Motors associates from Oshawa: Mr. E. R. S. McLaughlin, director of quality control. Mr. McLaughlin was born in Oshawa and is a graduate of the University of Toronto in mechanical engineering. He has 19 years' experience with our company. He reports directly to the president of General Motors of Canada and not to me.

Mr. A. S. Evans, general superintendent of our passenger car assembly plant, was born in London, Ontario. He holds a bachelor of industrial engineering degree from General Motors Institute in Flint, Michigan, and a bachelor of arts degree from Queen's University. He has 33 years' experience with our company.

Mr. J. B. F. Richardson, general superintendent of our truck assembly plant, was born in Scotland. He had 6½ years' university engineering there and extensive industrial experience before coming to Canada and General Motors 15 years ago.

As requested by your committee, we have submitted a detailed point by point comment on the brief submitted to you by members of Local 222 United Automobile Workers at Oshawa. If time permits, I shall be glad to read our submission to you or, if there are any particular sections of the United Automobile Workers brief on which you would like special comment or explanation, I, or my associates, will be glad to make further comment.

We were disappointed that your committee found it inconvenient to visit our plants to see at first hand the conditions under which our products are produced and the care that is taken in our manufacturing processes and in our organization to ensure high quality.

In studying the United Automobile Workers brief, it would appear to us that the union's attack on its own industry was four-pronged:

(1) They claim disappearance of certain traditional inspection functions. What the union deliberately failed to tell you was that where inspectors, chalk in hand, once circled defects and let them pass on for later repair, we now have trained repairmen who not only seek out defects, but correct them on the spot. In addition, I must tell you that we now have more inspection of critical and safety items than ever before.

(2) They claim insufficient time for line workers to do a thorough job. This is simply an attempt to re-negotiate a labour contract on Parliament Hill. It is an old cry, and it is raised whenever convenience dictates. It would not disappear if we were to double our employment while still operating at our current rate of production. Our labour standards are fair and equitable for all.

(3) They claim that "quantity over quality" is the rule in production. No builder of motor vehicles can operate and stay in competitive business for over 60 years and maintain number one position in sales year after year if he allowed "quantity over quality" to be the rule in production.

As I stated to you in my introduction of Mr. McLaughlin, the director of quality control reports directly to the president. In our plant, all inspectors report to the director of quality control through their immediate supervisors. He has final authority and responsibility for quality. Any other quality control techniques, such as statistical analysis or quality audit, are tools that have been developed to assist in the overall method of locating and correcting troublesome areas. These additional tools have been developed to complement, not to replace, as has been implied, the basic piece by piece examination of our products in the overall inspection activities. These added techniques help to evaluate and improve the final product.

By saying that our director of quality control has the final authority and responsibility of quality, we are not detracting from the responsibility of production personnel for their part in building quality into the product. On the contrary, as illustrated in our often repeated statement that "You don't inspect quality into a product, you build it in", we insist on the best workmanship possible. Our Zero Defects Program, recently launched in our plants, is a new name for this old practice. We recognize that excellence of product includes many factors, such as excellence of design, of materials, of equipment, of tools, and most important of all—of people.

(4) They claim that all of these problems can be solved by the introduction of government inspectors. We do not want government inspectors in our plants for the same reason that news media would not want government inspectors in their news rooms, that doctors would not want government inspectors standing at the operating table, or that parents would not want government inspectors in the house overseeing the way they raise their children. We believe our people do it better. We do not want government inspectors in our plant, because we are responsible people who have taken full responsibility for our products and services and lay them on the line every day for the most critical inspection of all—the inspection of the free market place. And we do not want government inspectors in our plants because we think we Canadians are in serious danger of being government inspected "out of our minds".

On February 2, 1967, as reported in your minutes of Proceedings and Evidence No. 26, Mr. Larry Sheffe, international representative of the United Automobile Workers, stated that, and I quote:

"Up until about 10 years ago, the automobile industry had a constant inspection system, where there was constant inspection of the cars on the line. They changed that to what they call a quality control system, which is just another nice name for inspection, but they put the responsibility for inspection in the hands of their production people."

General Motors of Canada has now, as it has had for many years, what Mr. Sheffe describes as a "constant inspection system" plus the added modern techniques which form the basis of an effective quality control department.

In conclusion, I believe that statements by the witnesses from Oshawa are a cynical misrepresentation of the facts. In all my many years in General Motors, I do not recall any incident similar to this cold deliberate unfounded and unproven attack on the integrity of our people or our products. I sincerely believe that these witnesses did not reflect the opinions of the thousands of General Motors people in Oshawa.

Thank you, Mr. Chairman.

The CHAIRMAN: Thank you, Mr. Conlin.

Mr. CONLIN: Now, I should like, if I may, ask Mr. McLaughlin, our Director of Quality Control, to carry on.

The CHAIRMAN: Yes, we shall ask him to do so, Mr. Conlin. Mr. McLaughlin, will you proceed.

Mr. E. R. S. McLAUGHLIN (*Director of Quality Control*): Mr. Chairman and honourable gentlemen. The following is a point by point comment by General Motors of Canada on a submission made March 1, 1967 by local 222 of the United Auto Workers.

Safety Switches on Cars Equipped with Automatic Transmissions

The witness has questioned the durability of our neutral safety switches, particularly at low temperature.

The purpose of the neutral safety switch is to guard against the possibility of starting the engine of a car equipped with automatic transmission, when it is in drive or reverse.

The neutral safety switch, used on our cars, is mounted on the steering control column and engages with a shift tube inside the column. The tang which engages with the shift tube is made of strong nylon and the body of the switch is bakelite, with a metal frame. The non-metallic materials are used because this is an electrical control requiring insulating properties.

Our switches have been tested, repeatedly, under extreme conditions without failure under both laboratory and actual operating conditions, as follows:

1. Cold weather tests at Kapuskasing, Ontario, this winter at temperatures as low as -50°F . (Cold weather testing at Kapuskasing has been an annual Canadian effort for over a decade).
2. Cold room tests at Oshawa, Ontario, at -20°F .
3. Cold room tests in the United States at -50°F .
4. G.M. Proving Ground 36,000 mile durability tests at Milford, Michigan.

It is regular practice to have these switches tested at low temperatures, and at high temperatures. It is the practice and policy of General Motors to conduct exhaustive tests at the design stage, and further, to continue to test samples from production runs after approval.

We know of no cold cracking problem with this type of switch in service.

Included in testimony was a reference to the discovery of cracked switches in our plant. General Motors supervision was aware, immediately, of this and traced the problem to the use of a hammer blow in making final adjustment, instead of doing it in the proper manner by loosening the screws. This improper method was corrected.

Power Brake Plastic Hose Connector

The witness referred to 1966 model trouble with a power brake hose connector—This actually is a power brake vacuum check valve which controls the flow of air between the vacuum supply and the power brake unit.

To insure the reliability of brake operation, this vacuum connection was designed to be a tight fit. Because of some assembly problems, due to this tight fit, design modification was accomplished for 1967 models, and the problem has been eliminated.

This was strictly an "in-plant" problem of assembly technique, which had no bearing on vehicle performance because we did not ship them with broken valves. There was no danger or performance deficiency.

Parking Brake vs Emergency Brake

The witness said in the brief, "The parking brake now in present use will only hold the car if it is not moving". That is not correct! While it is true that the use of the "parking brake" is to secure the car in a stationary position, it is not true that it will not stop the car, or that it would be ineffective in an emergency. In addition, the introduction of the dual hydraulic braking system, providing independent braking at the front and rear wheels, including a warning light to indicate the malfunction of either system, is a major contribution to vehicle safety.

In further comments about parking brakes, the witness indicates that design improvement could be achieved, if the brake operated on the drive shaft. This really becomes a matter of application and design. Where other design factors permit, our engineers prefer to have the braking action as near to the wheel as possible, and with brake application against two drums instead of only one. Thus a separate mechanical system operated by steel cables is achieved by operating these brakes not only independent of the already doubly protected hydraulic system, but at the wheels.

Inspector's Degree of Authority Over Final Finish (Paint)

Among the complaints and criticisms contained in the Oshawa Brief is one by a paint inspector, who seems to believe that he is unduly limited in the degree to which he is allowed to exercise his own judgment or to impose his own personal standards.

In the Final Finish (Paint) area, where the witness works, he is one of nine inspectors working under the supervision of an Inspection Foreman. Each inspector is given his assignment by his foreman, and is instructed as to the scope and extent of his assignment. In this way, the highest degree of specialization and expertness is achieved, thus a better inspection job and better final paint quality results.

In this particular case, the witness indicates that he has been instructed not to mark dents, unless the paint or metal has been damaged. The reason for this is

that the assignment to review metal is the responsibility of other inspectors. The responsibility of each inspector is clearly defined and, in total, all areas are covered. However, each inspector is encouraged to report any observations, that are outside of the scope and extent of his own assignment, to his foreman.

In any Industrial enterprise, it is Management's responsibility to make final decisions based on the facts at hand and utilizing its experience, ability, and job knowledge. As a member of Management, the Inspection Foreman has the authority and skill to make the final decision.

Coach Car Sill Joint

Another criticism of our product was the lack of solder in a sill metal joint on certain models, and the covering of such area with a chrome moulding.

Actually, this was put in as a product improvement. A non-corrosive sealer is applied to the area in place of solder. Our modern treatment of this joint permits the flushing of the joint by air and water, which reduces rust and corrosion. It is obvious that the witness was not in a position to evaluate this design feature.

Production People Applying Metal Approval Sticker

This complaint contains the obvious implication that Production people destroy or hide the evidence of an inspector's comments, by marking the job "approved" ignoring some defects that the inspector had marked for correction. The witness has come to an incorrect conclusion.

As vehicles come off the assembly line, they are checked by an inspection team, one of whom has the sole responsibility of either applying an approval sticker, or recording on a card his reason for rejection. This marked card proceeds with the car to a small group of trained metal finishers, who have the authority and the skills to resolve and take the necessary action to correct the defect. After having completed their corrective operations, these trained metal finishers are authorized to apply this sticker. At this point the original "Metal Inspection" card has fulfilled its function and can be discarded. Then, as the vehicle proceeds through further processing, it is subject to approval by another group of inspectors.

Fender to Door Alignment

The witness said in the brief "Often, to line the front fender up with the edge of the door, a large bar is stuck in behind the fender and it is pried out." The witness went on to imply excessive distortion to the point of broken welds.

We totally disagree with this implication.

Shimming is used to align the fender to the door and is effective. However, on a very limited number, we use a custom designed tool as a lever to effect any final necessary contour adjustments that were not completely corrected by shimming. When this method is employed, there definitely is *not* sufficient stress to cause weld failures in these assemblies. The sound the witness states he hears is produced by the movement of metal, and in no way is associated with the breaking of welds. This method does not cause "creaks" as stated in the U.A.W. brief.

Lack of Inspection in Department No. 63, Chassis Sheet Metal and Metal Finish

The charge that there is no inspection in Department No. 63 is untrue. There are two inspectors. Their names and badge numbers are: R. J. Galbraith, 68-013; T. M. Young, 68-095.

The hood assembly is accomplished on an automatic welder. Defects are extremely rare, requiring minimal inspection.

Further control is through maintenance technicians and preventive maintenance of the welding equipment itself.

In the rare event of an occasional "misweld" the defect becomes obvious to an inspector at a later point in assembly process. As a matter of fact, the witness described how one became obvious to him.

Mr. McLAUGHLIN: Mr. Chairman, could somebody else read a bit now, please.

The CHAIRMAN: Yes, certainly.

Mr. J. B. F. RICHARDSON (*General Superintendent, Truck Assembly Plant, General Motors of Canada*):

The Treatment of Government, Export and Show Jobs

The witness stated that government vehicles were taken off the line to be inspected, and implied that those going to the general public received less attention. The vehicles produced for the government are processed through our assembly operations with our regular production models, using the same tools, facilities, and procedures. Since they are not delivered through a General Motors franchised dealer, but disbursed directly to an armed service depot, we, at Oshawa, carry out the functions locally that franchised dealers perform for their customers. These functions are carried out locally by our own inspection people in conjunction with a Quality Assurance Officer of Materiel Command. Additionally, certain government requirements, such as identification plates, must be attached. This, and other similar work, is done off the line.

The vast majority of the automobiles produced at the Oshawa plant are delivered to the customer through a General Motors franchised dealer, whose responsibility it is to carry out certain pre-delivery operations laid down by General Motors "New Vehicle Inspection and Adjustment Check" sheet. Mr. Chairman, may I have this filed as an exhibit.

The CHAIRMAN: We should really put them all in at once. Is it agreed that this be an exhibit?

Some Hon. MEMBERS: Agreed.

Mr. RICHARDSON: This is a built-in assurance that our customer will receive a product in keeping with General Motors standards.

The witness also referred to special treatment for show jobs and cars for Overseas Export. Cars in these categories are, likewise, not delivered through a General Motors franchised dealer and, therefore, "make ready" operations are appropriately tailored.

Broken Drive Shaft

In the Oshawa U.A.W. brief, witness states "Last week a car went into the paint booth and a drive shaft fell out of it. It happened to be near quitting time and the car was just left there."

This incident did occur near quitting time, at 3:45 a.m. on February 22nd this year. On the following shift the cause was thoroughly investigated, and the drive shaft replaced, not "just left there."

The flaw that caused the failure was a defect in the universal joint forging which had not been detected by the steel manufacturer, the forging plant, or by the welding assembly people. But it did become apparent very shortly after the vehicle was driven from the Roll Test the severe power-train test to which all our vehicles are subjected. The high inertia of the Roll Test applies terrific load on acceleration and braking to functionally test the integrity of our power-train system.

All sub-assemblies in stock were individually re-inspected. No further flaws were found.

Door Frames Scratched

The witness criticised our procedure for repainting scratched door frames. We repaint any that become scratched in assembly operations. When the area to be repaired is deeply scratched or rough, it is sanded prior to paint application. There are no problems with paint adhesion in this area.

Lack of Inspection in Department No 64, Chassis Sheet Metal Paint

The witness' comment, with regard to the removal of people classified as paint inspectors in this department, is correct. In their place trained paint repair men check and correct minor flaws on the spot. Instead of having a paint inspector with chalk in his hand, a man is still there with sandpaper or polishing wheel. At a later stage in our final finish department, all hoods are re-inspected. We have proven that this change in method has resulted in better quality.

Paint Matching

The witness was critical of our ability to match paint. On a day-to-day average, less than half of one percent of the vehicles we build show any appreciable degree of colour mismatch between fenders and hoods, and the body. When this occurs, final judgement as to acceptability is exercised by inspection supervision, and the necessary corrective action is taken.

New Witness—Light Repair

I am now dealing with a new witness. The various statements made by the witness describing himself as a light repair man with 16 years experience, as such, contain considerable generalization, including what appears to us to be some thinking that is outside of his scope of experience as described.

His charge that production supervision has authority to overrule inspection supervision is completely inaccurate. The Director of Quality Control of General Motors of Canada reports directly to the President, and while the very nature of his assignment demands integration with production operations, his authority over quality is final.

The witness implies that inspection has been materially reduced. This simply is not true. However, in the reorganization of our plant toward the achievement of our undertakings under the Canada-U.S. Trade Agreement, substantial reorganization and realignment of model mix has dictated reorganization of certain facilities and procedures. From this witness' limited point of view, his

statements could appear to him to be true. Actually, the control of quality has been increased through this reorganization with special emphasis on VEHICLE SAFETY.

The witness then gets back into the paint inspection argument which, I believe, has been dealt with previously.

The Oshawa U.A.W. brief then quotes this same witness in a long paragraph which includes inferences of neglect by Management in the control of quality and repeats some statements already discussed. We will now deal with the balance:

Safety Switches

The witness expanded on previous testimony regarding safety switches by discussing production operations and inspection procedures.

With regard to production operations and inspection of these switches, while the procedure has been changed, the same care and attention is still provided to assure foolproof assembly. For explanation of this change, the following is done:

- (a) "Assembler" assembles switch to steering column.
- (b) "Roll-Tester" tests switch for function.
- (c) In the event that adjustment is required:
 - (i) A repair man makes the necessary adjustment.
 - (ii) For added protection, before the car is driven back on to the production line, it is tested and approved by another delegated repair man, who validates his approval with his personal punch on the car record card.

Injuries to employees

With regard to the witness' allegation relative to "legs jammed and legs broken between cars when starting up on the line".

This is another cold deliberate misrepresentation of the facts. Our records clearly show that the last lost-time accident of this nature in this area occurred on November 11, 1963, at which time a man drove a car clearly against instructions, and clearly in defiance of a sign warning of brake malfunction. In no way could this accident be blamed upon poor supervisory practice, or lack of attention to the welfare of people, or to a malfunction of a vehicle that had not been detected previously. We would seriously request this Committee to clear the supervisory people of General Motors of Canada of this false charge.

Our over-all safety record at Oshawa is one of the best in the automotive industry. Employees' safety is foremost in the operating policies of our company.

Punch to Pass Cars Out of Heavy Repair

The claim that group leaders "punch to pass out cars" is erroneous. Some delegated production people in the "Heavy Repair" area are authorized to use a personal punch to validate corrections made to certain categories of repairs. It is the final responsibility of the Inspection Department to review the record card for authorized punches before the vehicle is passed out of the section, at which time an approval sticker is applied to the windshield. There has been no

relaxation in the control of quality as implied by this witness. On the contrary, the control of quality has been improved.

"No Inspection in the Light Reject Pit"

The allegations of the witness that there is "No inspection in the light reject pit" is, in effect, another deliberate attempt to misrepresent the facts. Prior to January 3rd, 1967, Light Repair pit inspection operations were performed at a different geographic location. With our recent plant modernization program, it became possible, and highly desirable, to provide extended assembly line and pit facilities near the end of our main assembly line. These new facilities became operative on January 3, 1967. At this time the "light reject pit inspectors" referred to were transferred to these new facilities, retaining all former assigned inspection functions and, in addition, this permitted us to increase the scope and extent of their inspection operations.

Electrical Items

This refers to witness' statement "Not letting the inspectors inside the cars on the reject floor area to check the lights and operating mechanism, such as turn signals, horn, lights on dash, high and low beam."

Here, again, the witness is either unfamiliar with the sequence of the inspection operation, or is attempting to leave a false impression.

All wiring circuits are checked by qualified inspectors at four separate locations. The floor inspector referred to is responsible only for checking those items which have been recorded, but not corrected before reaching his work station. These items vary from day to day, and will include some that are electrical. All other items which have been recorded, corrected and approved prior to reaching his work station do not require further inspection at this point.

Door Locks and Hood Latches

Once again, the statement of the witness is untrue, when he refers to the periodic checking of door lock and hood safety latches. Door locks and hood safety latches are 100 per cent inspected by qualified inspectors. The witness, obviously, has been confused by the relocation of inspection operations.

No Inspectors in Small Parts Paint and Motor Line

Here, again, the witness is either confused or is misrepresenting the facts. The names and badge numbers of the inspectors assigned to the two described areas are: N.A. Begg, 68-093; A. J. Thompson, 68-208; M. J. Piggott, 68-029; J. J. MacDonnell, 68-204.

Mr. Chairman, an example of this inspection card is also available.

The CHAIRMAN: Is it agreed that this inspection card should be filed as an exhibit?

Some hon. MEMBERS: Agreed.

Mr. McLAUGHLIN: Mr. Chairman, may I continue?

The CHAIRMAN: Yes Mr. McLaughlin.

Mr. McLAUGHLIN:

Assembly Line Labour Standards

The witness has taken the opportunity of his appearance before this Committee to attack our labour standards, as he interprets their relationship to the

safety performance of our vehicles. This subject is beyond his authority and responsibility.

The authority and responsibility to establish sound labour standards on a fair and equitable basis belongs to management alone. Adequate procedures are provided in the labour contract between our company and the union, allowing for a special grievance procedure for labour standards, including the right of appeal. Any employee who considers the labour stand on his assignment to be unfair or inequitable, has the right to lodge a protest through the special grievance procedure.

For purposes of this brief, we wish to say that we have modern equipment and facilities provided so that quality can be built into our vehicles in progressive stages. We believe that our work standards are fair and adequate. Further, repairmen, to whom he refers, are seldom given repetitive production operations, except those of a checking nature for quality validation. If, for example, a repair man cannot complete the repair sequence at his point of operation, provision is made to take care of it at a subsequent repair station.

General Comments re Threaded Nuts, Bolts, Screws and Other Fastening Devices:

In another long paragraph, the witness implies both poor design and lack of control over methods of assembly for fastening devices in general, making special mention of several that he says could result in unsafe automobiles. There is no evidence of accuracy in these statements. For example:

Tie-Rod Ends are 100 per cent hand torqued by two men assigned to this operation, and using controlled torque wrenches. These men individually punch cards certifying approval.

Upper Control Arms are 100 per cent inspected at the assembly point, re-torqued 100 per cent, and adjusted if necessary.

Controlled re-torquing is being done on all critical assembly fasteners. All important torque items are audited and reported daily. Our foremen, torque specialists, maintenance and tool engineers are advised, hourly, of torque readings.

Other design referred to ranges through the use of plastic for grilles, instrument panels and fastening devices. Many of these parts are the result of the work of General Motors people through G.M. Research and Engineering Facilities, which are second to none in the world. His reference to "cheap plastic" is utter nonsense because of our policy of product integrity.

Criticism of Floor Panels and Other Design Changes:

Continuing on the above-mentioned long paragraph, the witness states "On the floor panels where there used to be braces spot-welded on these is only a crimp in the metal". What witness calls a "crimp" is "designed-in strength" on the same principle as steel roof is corrugated to carry heavy loads. In addition to this product design improvement, heavy cross members are welded to the floor pan to increase structural strength. This product design improvement has been paralleled by similar research in frame construction which has yielded substantial strength increases to the total vehicle. All such designs are thoroughly validated through extensive functional tests. Also, they are confirmed by 36,000 mile Proving Grounds durability tests, which include the Belgian Block road test.

Snow Shields

Across Canada, we have more than 1,100 Dealers, and our Product Service Division, to this date, have had no complaints with respect to any customer being unable to have these snow shields installed. The witness could not, or would not, reveal to us the names of the two acquaintances who were unable to get snow shields installed on their cars.

Our statement on Government Inspectors has already been covered by Mr. Conlin.

The CHAIRMAN: Would you mind reading it so the record will be complete?

Mr. McLAUGHLIN: Mr. Chairman, I would be glad to.

The CHAIRMAN: Has Mr. Conlin read that into the record?

Mr. McLAUGHLIN: Yes, Mr. Conlin did.

The CHAIRMAN: All right.

Mr. McLAUGHLIN:

Zero Defects

We are thoroughly disappointed and surprised that any employee of ours would speak critically of the Zero Defects Program that we have just instituted for all our people in plants and offices. The program asks and encourages each of us to do his job right the first time. This approach has been successful in the Aero Space Industry and many other Manufacturing Industries. Out of 14,218 people approached so far at Oshawa, 14,050 have personally pledged their support of this program.

The CHAIRMAN: Thank you very much, gentlemen. Mr. Mather has made a suggestion that we might adjourn and come back again after the orders of the day. I think probably Mr. Bannatyne wants to make a presentation similar to that of Mr. Campoli and Mr. McLaughlin. What is your desire, gentlemen?

Mr. TOLMIE: I think that would be sensible, Mr. Chairman.

Some hon. MEMBERS: Agreed.

Mr. PUGH: Mr. Chairman, there is a possibility that I might not be here. I have one very short question that I wanted to ask with regard to the last brief.

The CHAIRMAN: We probably can go on to one o'clock. Will you be able to come back, Mr. Mather?

Mr. MATHER: I will be able to come back, sir, but I think it would make more sense if we adjourned now and then come back.

The CHAIRMAN: In view of the fact that Mr. Bannatyne has nothing more to present, we could proceed to the questioning period right now. The names that I have are Mr. Whelan, Mr. Tolmie, Mr. Honey and Mr. Pugh, in that order.

Mr. WHELAN: Mr. Chairman, I note that the people at General Motors are very much against government inspectors.

The CHAIRMAN: Please make your question specific and state to whom you wish to direct it.

Mr. WHELAN: What I am trying to say is that many other facets of our industries, specifically agriculture, have all kinds of inspectors to protect the public. Do you think the automobile industry is that much different?

The CHAIRMAN: Who wants to answer that question?

Mr. CONLIN: I will attempt to answer that question. Over the many long years at General Motors we have built into our organization a tremendous wealth of knowledge and technique, experienced technicians and I think, as I said before, that we can do this job better. I might also reiterate that I think our record proves that we have done a pretty fine job with the public in toto.

Mr. MATHER: Mr. Chairman, I have a related question on that very point. May I ask it.

Mr. WHELAN: I have several related questions.

The CHAIRMAN: Let Mr. Whelan continue.

Mr. WHELAN: I just want to proceed with the government inspection question a little bit further. We have checked with people, the Bell Telephone Company and the Government, who buy vehicles and have their own inspectors, and they feel that this is a worthy venture, as far as they are concerned. What you are inferring then is that the government—and I am speaking as a member of Parliament—is wasting its money by having inspectors in your plant because the ordinary civilian gets just as a good vehicle as the government does, and that there is no advantage in the government having inspectors there to inspect the government's vehicles?

Mr. CONLIN: I would have to agree with you.

Mr. WHELAN: That is your feeling?

Mr. CONLIN: Yes, although I might show the Committee some documents that I have. The government of course is very interested in its vehicles. Here is a government specification for a vehicle. Most of these specifications are standard equipment, such as options and so forth. In addition, there are some features on the government jobs that are not called for on the domestically produced jobs. A case in point is antifreeze. Another case in point is contract numbers, and this I think is placed on the door pillar. There is also some other identifications placed in other places. These are the areas, I believe, in which possibly the government representative is pretty interested. But, in answer to your question, we will give the government a good job without a government inspector, provided they give us the specifications.

Mr. WHELAN: Mr. Chairman I am now going to get away from the related questions in which Mr. Mather was interested.

The CHAIRMAN: Perhaps Mr. Mather could ask his question then.

Mr. MATHER: If I could, Mr. Chairman. Thank you, Mr. Whelan. I have a question on government inspection service in the plant. Considering the unfortunate or unhappy image that the automotive industry presently presents to the public, would it not be in the interests of that industry to have impartial government service inspection personnel in plant from the point of view, say, of

taking the heat of the industry by establishing or re-establishing public confidence in that industry. What is really the objection to having this impartial service?

Mr. CONLIN: I would like to go back a little bit to properly explain this.

As we all know, inspection of quality begins on the drawing board. Inspection of quality begins, with the engineer, in the processing, whether it be in the mill, the foundry, a stamping plant, in the trim shop or in the assembly plant. It begins with the engineer formulating specifications. It also begins with the technician in developing the facilities in layouts. Quality is a never ending process, from the time it leaves the drawing board.

I would have to say to you that we do not need government inspectors because, if you want us to put it in this way, he would have to go back to the drawing board; he would have to go back to the foundry; he would have to go back to the formulation of the material; he would have to go back to the mill. These are all done in our processing of producing an automobile from the time it is on the drawing board until it is delivered to the public.

Mr. TOLMIE: May I put a related question?

The CHAIRMAN: Mr. Tolmie says he has a related question.

Mr. WHELAN: Before you go too far, I would like to finish my questions.

The CHAIRMAN: Go ahead, Mr. Whelan.

Mr. WHELAN: I have a question on inspection. I had two different makes of vehicles, manufactured by two different companies. One had a trunk that leaked to the extent that it looked like it had a tub full of water in the back of it and the other one leaked through the bottom, and in neither instance were these fixed by anybody. Even in the fine print in respect of one of them—I should have brought it with me—it tells you that when you buy a vehicle that they are not responsible for body failures such as this.

Mr. McLAUGHLIN: Mr. Chairman, may I try to answer the honourable member's question by indicating that all of our vehicles pass through water test facilities and we make every attempt to find and correct these leaks before the vehicle leaves the plant. I do not know what further a government inspector could do to make any more sure that there are no leaks.

Mr. WHELAN: But does the government inspector himself put this through a test or does he just observe the test you speak of for, say, a windshield or body leak? Does he do anything at all, or just observe what your people do?

Mr. RICHARDSON: Mr. Chairman, may I answer that question. No, Mr. Chairman, he does not inspect for water leaks on a government vehicle.

Mr. WHELAN: Thank you. That is all, Mr. Chairman.

The CHAIRMAN: Mr. Tolmie, you have a related question?

Mr. TOLMIE: My related question, of course, is in relation to this question of government inspectors. Would you agree that car manufacturers actually mass produce a product for the use of millions of people and that there is always a possibility, through safety defects, that this product may not be safe for the consumer? Is that a fair question?

Mr. McLAUGHLIN: Mr. Chairman, it certainly is a very difficult question to answer. In fact, I do not know exactly how to answer it. It is always possible for a defect to occur despite all of the inspection that any of us can do.

Mr. TOLMIE: Yes, perhaps. I do not want to be unfair about this question. I just wanted you to say "yes" or "no" as to whether this is not a situation where you are manufacturing a mass product consumed by people. Is that correct?

Mr. McLAUGHLIN: Right. Certainly.

Mr. TOLMIE: Now we all know that the processing and sale of food and meats is under government inspection, and this is for our protection. I assume that you would not want those government inspectors withdrawn. Would that be right?

Mr. McLAUGHLIN: I do not know about the meat industry. I am not an expert on that.

Mr. TOLMIE: But you would not want government inspectors withdrawn from situations where food is processed and sold to the public? Anybody can answer this.

Mr. CONLIN: I would like to answer that by saying that I am not close enough to the food industry, or any of these industries referred to, to comment on it. I can only come back to you, Mr. Tolmie, and say that in our business we do build a quality into our parts and components from the day it goes on the drawing board because, as you understand, the automobile industry has tremendous technical research and as to whether the other industries have these kind of services, I cannot answer.

Mr. TOLMIE: You have not answered my question. But if this is so, that your quality is so right and you manufacture such a good and safe product, why would you object to an independent inspection?

Mr. McLAUGHLIN: May I answer that?

Mr. TOLMIE: Yes.

Mr. McLAUGHLIN: Mr. Chairman, in respect of government inspectors, I get the feeling that is you do have a government inspector clearing and passing every vehicle, it seems to take the onus of the job of the quality product of the vehicle, the safety and everything, off the manufacturer's back. The government inspector says, "That job is O.K.," and it becomes his responsibility. Right now, we want to take that responsibility; we always have.

Mr. TOLMIE: Would it not be possible for a government inspector to make certain that your quality control is properly conducted without having to actually examine each vehicle? The Unions alleged that your quality control is not of as high an order as it has been in the past, basically because you allow production to take priority. If this is so—and this allegation is there—would it not be possible for a government inspector to make certain that your quality control is properly enforced?

The CHAIRMAN: You are really getting back to Mr. Mather's question as to whether it would not be advisable, from the standpoint of personal relations, may I call it, to have government inspectors in your plants, and that this might improve your image so far as the public is concerned.

Mr. PUGH: Mr. Chairman, we never did get an answer to that question.

The CHAIRMAN: I know.

Mr. KIBORN: Well, Mr. Chairman, first of all, I suppose it is still a matter of judgment whether or not the industry is getting that sort of a black eye—

The CHAIRMAN: That is true.

Mr. KIBORN: —today, and I do feel that a government inspector going in, for public relation purposes, would mean that it is practically a useless purpose. I think we are responsible for our public relations too; I think this is our job, and I do not think that we want a scapegoat by having a government inspector in and passing off our responsibility.

Mr. TOLMIE: One final question.

The CHAIRMAN: This is on inspectors?

Mr. TOLMIE: Yes. I have not received what I consider a satisfactory answer to my question. If government inspectors are used in aircraft factories in Canada, I assume that the purpose would be to make certain that aircraft that are produced are safe, because people are travelling in them. Is this not analogous to a manufacturing plant producing automobiles? They are producing an auto to be used by people, and people want it to be safe. Where is the distinction? We have it in the one situation; why should the principle not be also adopted in your situation?

Mr. KIBORN: We feel that the current systems under which we are operating are adequate for the production of a quality vehicle. In our company, I think that we are prepared to listen to any sort of suggestion that is going to result in us having better products and safer products, but until you have some terms of reference to study, to find out what people would do, how they would act, how many there would be? What would be the effect on cost, would they replace other people; what sort of experience do they require—until you have this information I think it is almost impossible to accede to any suggestion of government inspectors, when we feel—and I think it has been expressed by everybody here today—that the systems that we have are adequate to produce a good quality safe vehicle.

Mr. TOLMIE: What you say now is that if the proposal of government inspection was advanced, you would consider it. There is a flat denial of government inspectors in the brief presented by General Motors, but you would leave the door open if you thought—

Mr. KIBORN: I think probably we take the same position as General Motors takes on this. However, here, we are considering it today, because you asked the question. We do not know under what circumstances these things may have to be considered.

The CHAIRMAN: Mr. Cantin, do you have a related question?

Mr. CANTIN: Yes, Mr. Chairman. What would be the use of having government inspectors in the plant when Chrysler Corporation says, in their brief, that there are already 302 persons engaged in quality inspection and control? How many inspectors would the government need to perfect such an inspection?

Mr. KIBORN: I would not have any idea, and I would not have any idea of what they would do.

The CHAIRMAN: Mr. Grafftey, have you a related question on government inspection?

Mr. GRAFFTEY: On inspection, I have three very brief related questions, Mr. Chairman.

Is it a fact that other forms of transportation—ships, aircraft and rolling stock on railways—are government inspected for safety purposes?

Mr. KIBORN: I do not know that to be a fact. I have heard that that is so.

The CHAIRMAN: Mr. Mehrer, do you have an answer?

Mr. MEHRER: I have no opinion at all on it because I have no knowledge of it.

Mr. GRAFFTEY: My second question is definitely on inspection and is a related question, Mr. Chairman.

Would the spokesman for the industry agree with me that highway deaths and injuries constitute a public health problem?

Mr. BANNATYNE: I would say that they are of public concern and interest.

Mr. GRAFFTEY: In view of this then—and I am not necessarily being specific about inspectors—would you not agree that if it is a public health problem, that some public authority should be established in automobile factories to guard the public interest in terms of safety?

Mr. KIBORN: I think you are getting at what might be the cause of the accidents, which may not have anything to do with a malfunction or a defect in the vehicle; it could be caused by many, many other reasons, and I think they are.

Mr. GRAFFTEY: Could I just pursue this line of thinking. I would admit to the witness that it is only one of the three factors.

The CHAIRMAN: Mr. McLaughlin wanted to answer your third question.

Mr. McLAUGHLIN: Where we are deeply concerned about the highways problem, it seems to me, is the maintenance of the vehicles which are in service, and it is here that we strongly feel that government inspection of vehicles is needed because it would be a tremendous help to this whole problem.

Mr. GRAFFTEY: Could I finish off with this last question. In view of the satisfaction that the industry seems to feel with their own inspection system, how would they reconcile this with the thousands of recalls we have heard about over the last couple of years? I am referring to defective recalls that we read about in the paper every week and about which the public are becoming most concerned. How would you reconcile the defective recalls you have had over the last two years with the seeming satisfaction in this brief with your in-plant inspection system for safety?

The CHAIRMAN: Is that on government inspection?

Mr. GRAFFTEY: It is certainly on inspection, Mr. Chairman. If the cars were being properly inspected, how could they be going out on the road defective?

Mr. BANNATYNE: I would be glad to answer that comment, Mr. Chairman. So far as government inspection is concerned, you are relating this to our existing systems which we have explained, and I think we have indicated that we feel those are essentially satisfactory, capable, well designed and well controlled. So far as the recall campaigns—as they are described—are concerned, there will be instances, and I think we admit the possibility of some conditions occurring despite what we have. I think we would have to admit that whether or not government inspectors were added to our system, some of these conditions are also going to occur. They constitute a variety of situations. When you mention recalls in the last two or three years, this is not new. The automotive industry has been stepping up to this responsibility for some 30 or more years, and it is an acknowledged practice if we find or suspect some unfavourable conditions, we immediately employ all our forces to determine the extent of that and the degree of it, and if it is confirmed that it exists or even could exist and be a safety hazard, we immediately take action to have those cars looked at.

If I may, the other comment about thousands and thousands of cars being recalled comes out. We may call back 3,000 or 4,000 cars to pick up four or five or maybe no actual defects, but suspected defects from a given lot.

The CHAIRMAN: Mr. Pugh has indicated that he wishes to ask some questions.

Mr. GRAFFTEY: Could I just ask one last related question on government inspection?

The CHAIRMAN: I am just trying to be fair to all members of the Committee, Mr. Grafftey. Mr. MacEwan and Mr. Pugh want to ask questions, but you may proceed.

Mr. GRAFFTEY: I would like to close with one further question, and I am not going to go into the details of whether you should have inspectors *per se* or should go into the sophistication of the inspection. In view of the fact that we are now dealing with a public health problem, would the industry not accept the principle that some public authority should be installed at automobile plants, as we have at plants which manufacture other modes of transportation?

Mr. MEHRER: Mr. Chairman, as a company, I do not think we deem it appropriate to tell the government how to spend public money. We have had so much reference to other industries where there is government inspection, and I believe there has been a clear inference drawn that nothing is ever found wrong with these industries. I believe that you will find incidences of whole fleets of airplanes being grounded for call-back. You will find a line of drugs that destroys and maims and does all these things. If there were one thing more we could do in respect of procedures in the automobile industry, we would be doing it today, we would do it tomorrow and we would continue to do it. I guess our feeling is: What does a government inspector do? We are not looking for a scapegoat, as has been mentioned before; we are looking for a realistic approach to improved quality. If anyone can come into our plant and say: "You can improve quality", the cost is incidental; we will do everything that is suggested to improve quality.

The CHAIRMAN: Mr. Pugh, you are next and then Mr. MacEwan.

Mr. PUGH: I knew Mr. Grafftey was going to hit on my question finally, and I think Mr. Mehrer has given a very good answer. My question was simply this: What duties do you feel that a government inspector could do to further safety and quality of your automobiles in your plants? Before you answer this, I take it that this is a hot question with the automobile industry, and that obviously the heads have got together—if heads of the automobile industry can get together from time to time—and said: "What in hell do we do on a thing like this?" Now what I would like to find out—and this is further to what you said—is how you would envisage a government inspector in your plant, and what would his duties be?

Mr. MEHRER: I think probably that is the point of contention that we have recognized, and I do not say that it is because we have gotten together or that there is collusion. I think it is more a matter of a general understanding of our own business and our ability to conduct it in what we feel is the best way possible, and I guess we cannot resolve in our own minds any assistance, help or aid that could be given to the industry by the adding of a government inspector.

Our unit is processed through a system and the most important part of our inspection function is the end process inspection that has been mentioned in our briefs. We identify the safety areas of the car with certain markings and we have repair men who go after them. We employ hundreds of people in our inspection departments, and I do not know how you could make an effective program without hundreds of people. You would have to duplicate our every effort to make it a satisfactory type of approach.

Mr. PUGH: That is a very full answer, and it certainly has satisfied me.

Mr. MEHRER: Thank you.

Mr. MACEWAN: I would like to ask the witnesses what type of training their inspectors go through before they are qualified?

Mr. CONLIN: I would like Mr. Richardson to answer that question.

Mr. RICHARDSON: I would say that it depends entirely upon which facet of the inspection department we are talking about.

Mr. MACEWAN: Give an example of any part of the line.

Mr. RICHARDSON: I could train you, sir, in three days to be a metal finish inspector for that part, or it may take two weeks training to train—

The CHAIRMAN: If he is a lawyer, it might take you a little bit longer.

Mr. MACEWAN: And a Nova Scotian, probably a day.

Mr. RICHARDSON: It can vary from a three day period up to several weeks, depending on the facet of inspection that we have in mind.

Mr. MACEWAN: And they are trained right there in your own plant in Oshawa?

Mr. RICHARDSON: Yes. Undoubtedly, for a precision inspector it is going to take much longer than three weeks.

Mr. CONLIN: It all depends on the type of operation that is involved. A precision inspector would involve years, but a visual inspector is something different.

Mr. MEHRER: There is another thing that I think should be remembered. For instance, a metal finish inspector is usually a man who has maybe been an hourly worker on metal finish for 5 or 10 years. We upgrade our inspectors from our hourly groups, where they have had a background or an experience in the type of work that they are going to inspect. Therefore, they have had training that could extend over 20 to 30 years, according to their length of service with the company, which minimizes the need for extensive training in some areas.

Mr. MACEWAN: Each one then is a specialist?

Mr. MEHRER: Yes, to the best of our ability, and in accord with our union contract, you select these kinds of people.

Mr. PUGH: They are union men?

Mr. MEHRER: Yes sir, they are. They come right from the ranks of our direct labour hourly people.

The CHAIRMAN: Mr. Honey wants to put some questions and so does Mr. Whelan. Does the Committee wish to come back this afternoon? What is your opinion?

Mr. HONEY: I will only take about five minutes, Mr. Chairman. I do not know what other members think, but my opinion is that perhaps we should finish up now and let the gentlemen leave.

Mr. MEHRER: If there is something that we can add to your knowledge which would be of interest to you, we do not want to leave.

Mr. PUGH: I hope I am down for a question.

The CHAIRMAN: Yes, you are down on the list, but you got in on a related question.

Mr. PUGH: I had to stop Mr. Grafftey somehow or another.

The CHAIRMAN: What do we do then. Mr. Honey, do you want to go on with your questioning?

Mr. HONEY: I would be happy to, Mr. Chairman.

Mr. WHELAN: Is he on the list?

The CHAIRMAN: He is on the list; he is not ahead of you, but second behind you.

Mr. WHELAN: But I did not give up my position, Mr. Chairman.

The CHAIRMAN: Well, you go ahead. I will not argue with you because I know I would not win.

Mr. WHELAN: First of all, I want to make a short statement, which I have made before. I sold casualty insurance. You talk about training and inspection in respect of airplanes, boats and trains; if we trained our automobile drivers the same as operators of these other crafts—pilots, engineers on trains and so on, I do not think we would be so concerned about this great health hazard that we are concerned about.

Mr. GRAFFTEY: Mr. Chairman, Mr. Whelan is completely out of order in making a statement that has nothing to do with the session today.

The CHAIRMAN: We have to allow some irrelevance.

Mr. WHELAN: I am not out of order. Just because you tell me that I am out of order does not mean that I am. You have made statements about the manufacture and inspection of aircraft and everything else; these vehicles are operated by trained personnel whereas an automobile driver is not.

The CHAIRMAN: The question is in order. Proceed with your question, Mr. Whelan.

Mr. GRAFFTEY: It is not a question.

Mr. WHELAN: I think you should be the last one to talk about such things.

Mr. GRAFFTEY: I am not making personal remarks, but I do not think it is the time for a statement.

The CHAIRMAN: Just ask the question, Mr. Whelan.

Mr. WHELAN: It was pointed out in the briefs today that damaging accusations were made or you felt that they were made. Do representatives of any of these companies present feel that these accusations have hurt the sale of automobiles?

Mr. KIBORN: I think if some statements like that go un-answered, they could very well have an effect.

Mr. WHELAN: If these are false statements, do you plan on taking legal action?

Mr. KIBORN: I do not think we have given any consideration to anything like that, Mr. Whelan. We simply wanted to answer the charges.

Mr. MEHRER: Could I make a statement? I think the buying of any consumer commodity is an emotional type of experience and people experience the emotion in the expenditure of their money. I think anything you do to change that emotion in another direction, necessarily has an effect. I guess the severity of it is rather difficult to judge. Your papers can come out with headlines which cause people to quit buying stocks and the stock market goes down. There are a lot of implications, and I think that would be kind of a general approach to it.

The CHAIRMAN: Mr. Honey, you are next.

Mr. HONEY: Thank you, Mr. Chairman. This has been a very useful meeting this morning. It has given the automobile manufacturers the opportunity to deal with evidence given to us on March 1. You have, in effect, said that the evidence was irresponsible, and I suppose that is for the Committee to decide. I wonder if any of the gentlemen would like to comment—because this bothers me, and I am sure it bothers all members—on the diametrically opposing evidence we have had from the union representatives before and from the manufacturers this morning. Are you saying, in effect, that we should give no credence to the union's evidence?

Mr. MEHRER: Could I read a statement of an incident that occurred in our plant last week?

Mr. HONEY: I wonder if you could just answer my question. I am not expressing an opinion; I am asking for information. Are you suggesting that the union was completely irresponsible in its evidence on March 1?

Mr. BANNATYNE: From our point of view, we are passing on to you our opinions, our statements, as well as explaining our system. We are prepared, if you wish, to discuss some of the specifics that may have been mentioned and to give you our side of the facts. I think the decisions made are up to the Committee.

Mr. HONEY: Thank you.

Mr. MEHRER: If my company felt that this attack was merited, we should not be in the business that we are in. I do not think we could, under any influence or by any reasoning, accept that the charges are correct because, otherwise, it would not conform to our attitudes, our abilities, our desires and our objectives.

Mr. HONEY: Again, I am asking for information and not expressing an opinion. Do you say that the evidence was, in toto, irresponsible? Were there any parts of it that had validity, to which we could attach any importance?

Mr. MEHRER: I think this is a matter of jurisprudence, or whatever you would call the legal approach to it, but I do not know that we should be put under the veil of calling someone else a liar. I think we were invited to state our position, which I feel that we did, and we did it sincerely, honestly and, in our opinion, that is the condition in our plant. I assume that you gentlemen would have to draw whatever implications from it you would want to, if we are in direct contradiction to the statements that were made, but we will stand on the statements that we have made.

Mr. McLAUGHLIN: Mr. Honey, I think you will note in our brief that when we agreed with the witness we said so, and where we thought he was incorrect, we said so.

Mr. HONEY: Yes, and I gather, in many places in your brief, you felt that he was probably not well informed on the particular thing, and this can be rationalized.

Mr. KIBORN: This is true. If I could just make a supplementary answer, I think it is not a question of saying that somebody told a lie or it is untrue. I think it just falls into the nature of being inaccurate, maybe incomplete, or not having really a full knowledge of what the process was.

Mr. HONEY: I am pleased to hear that, because that is really my assessment. Much of the evidence which we heard on March 1, was due to maybe not a complete understanding of responsibility and the area in which the witness had his responsibility.

Mr. CONLIN: Mr. Chairman, I would also like to add that upon receiving this brief, we spent considerable time with all our people to evaluate the claims that are in that brief, and we did it as honestly and as sincerely as we knew how in order to present to you people this morning the facts as we saw them. I know of no item where we have disclosed or alleged that the union were misquoted, where they were misunderstood, or did not quite understand maybe some of the operations that we have changed around in our plant, that we have not quoted in that text. I think that we have come here this morning with as fair and as clear a position as we can.

Mr. HONEY: Mr. Chairman, I just have one more aspect of my question to cover and then I will be finished.

You have given your opinion to the Committee about government inspectors in plants, and I am wondering if it would be a reasonable suggestion to make, that manufacturers should certify or in some way satisfy the government agency that the vehicles manufactured conform to the specifications of the Canadian Government Specifications Board, as required for government vehicles, for example, Do all vehicles conform to these specifications or only government-purchased vehicles?

Mr. MEHRER: If you are talking about the government specification as a specific, no; all vehicles do not conform because the government has certain specifications—again, the patent plate is one of them and that sort of thing. But I would say that on the basis, they are identical.

Mr. HONEY: Are they identical with the exception of the plate and other things that maybe are not of material distinction?

Mr. MEHRER: Other than the accessory value, the special items that are identified as different on the government vehicle.

Mr. HONEY: Would there be any merit in a suggestion that in place of inspectors—if it was suggested to manufacturers that there should be government inspectors—that you might be prepared to certify in some formal fashion that your inspectors and your people are satisfied that the vehicle manufacturers conform to specifications which could be or are available from the Canadian government.

Mr. KIBORN: I wonder if I could ask Mr. Lacy to make a comment with regard to that question.

Mr. GEORGE A. LACY (*Chief Engineer and Director of Product, Chrysler of Canada Ltd*): Thank you, Mr. Chairman. Mr. Honey, I think you asked if there could be a certification that the vehicle conformed to certain federal specifications?

Mr. HONEY: Yes.

Mr. LACY: I think you are aware that in the United States there is the National Traffic and Motor Vehicle Safety Act of 1965. In accordance with that act, cars for sale in the United States will be so marked.

I would like to make the plea that this is a North American industry at this time, partially because of an enactment of this government in the trade pact, and we are striving vigorously to get the standards on both sides of the border exactly the same. It will make it much easier for the manufacturers, frankly, and for the governments, if they do get together. We will be prepared to put that same statement on cars for sale in Canada, but if we have different standards, it gets a little touchy.

Mr. HONEY: Then if the Canadian government required you to make this certification, you think this would be a reasonable request?

Mr. LACY: I would think so, Mr. Honey, yes.

Mr. GRAFFTEY: I have a related question, Mr. Chairman.

The CHAIRMAN: Mr. Pugh has some questions and, if we have to come back, we might just as well adjourn now.

Mr. PUGH: I will just take a very short while.

Mr. HONEY: I am through, Mr. Chairman.

The CHAIRMAN: What about the other members. Do you want to come back after orders of the day or would you rather finish up now, on the basis that we have only a very few more questions. If members still have a lot of questions, obviously we will have to come back. What is your decision?

Mr. GRAFFTEY: Mr. Chairman, in my view, the witness has just made an extremely important statement and I would think it most unfortunate if we could not continue questioning him.

The CHAIRMAN: We will then come back after orders of the day. We will adjourn.

AFTERNOON SITTING

The CHAIRMAN: Gentlemen, we will resume our meeting. Are you prepared to ask your questions now, Mr. Otto?

Mr. OTTO: I was going to address the first one to Mr. Kiborn since he mentioned in his brief that at a certain stage two hours and fifty minutes had been spent on inspection. Can you tell me generally how much time is spent on inspection; how many hours, over the whole car, including the component parts? Have you any idea?

Mr. KIBORN: The two hours and fifty minutes is the time that is spent during what we would call the line inspectors. From the time the car starts on the line until it is off the line it is two hours and fifty minutes.

Mr. OTTO: Could you give me an estimate of the time that is spent on the whole car including manufacture of component parts? Have you any idea of that?

Mr. KIBORN: Oh, I could not answer that question. We are getting into 'vendors' plants now. I think it would be too broad a question for us to be able to answer.

Mr. OTTO: Do you not have a breakdown of the cost? What is your cost a car for inspection?

Mr. MEHRER: I do not think we would be prepared to make a statement on this. It would take time to get it, although I am sure that someone could arrive at

Mr. OTTO: We have heard the witnesses prior to you and they, of course, claim that the speedup of production is the cause. You say that the component parts are made perfectly and, indeed, if they were assembled by a band of angels have no doubt it would be a perfect car, but the car is not assembled by angels; it is assembled by men. You have also stated that production has no relation at all to inspection; that you do not sacrifice inspection or safety for production. Is that correct?

Mr. KIBORN: I think what I stated, sir, was that any safety items which during the inspection process, was noted for repair, must be repaired before that car can be released.

Mr. OTTO: Are the people of the inspection department, who inspect the cars considered management or labour?

Mr. KIBORN: The people who inspect them on the line are hourly-rated employees and members of the bargaining union.

Mr. OTTO: So, they are members of the union?

Mr. KIBORN: The ones that we call line inspectors.

Mr. OTTO: If they do their job absolutely perfectly, they would have to report their fellow brothers on the production line. They would have to put some blame on them, obviously, would they not?

Mr. KIBORN: I guess it would be the context in which you use it. All we know is that when they inspect the cars, if they find conditions requiring repair it is their responsibility to mark them on the cards.

Mr. OTTO: If they mark them on the cards, do you then make any attempt to trace whose fault that was on the production line?

Mr. KIBORN: I think Mr. Bannatyne could answer this question for you.

Mr. R. M. BANNATYNE (*Director of Quality and Reliability, Chrysler of Canada Ltd.*): Yes. On occasion; depending on the nature of the item and what is involved, we will make an investigation of our own, first of all to determine that our system is under control and this will not be a repetitive condition. If it turns out that there is some problem in the process that generates this, we will investigate it to whatever extent is necessary, pin it down, correct it, and make sure that it does not continue to occur.

Mr. OTTO: If you find that it is a repetitive sequence, that is, the same production line worker is the cause of the faulty workmanship, you will take disciplinary action against him?

Mr. BANNATYNE: Yes, that is correct.

Mr. OTTO: So, therefore, this brings out what I am saying. The hourly-rated worker or the brother union member is expected to report to you, which might prejudice another brother.

Mr. BANNATYNE: He is not expected to do this in that context. He is expected to do his job which is the responsibility of inspecting the vehicle.

Mr. OTTO: Again, let us not talk about a band of angels; let us talk about human beings.

Mr. KIBORN: Mr. Smith was introduced this morning who is the manager of our Passenger Car Assembly Plant and perhaps he could throw a little light on this for you.

Mr. C. R. SMITH (*Plant Manager, Passenger Car Assembly Plant, Chrysler of Canada Ltd.*):

Mr. Chairman, in answer to the questions asked concerning the inspector pointing out his own fellow member in our system, in which we have travel

cards and which were put in evidence at this meeting, these inspectors are audited. They are audited daily. They must perform the requirement of their job. If they do not perform the requirement of their job they are disciplined. They are instructed properly and then disciplined if they continue. When the hourly-rated direct line employee performs the operation on the car he, too, must perform his work according to the job instruction which the foreman has given him. If he does not perform his job and he continues not to perform his job, he, too, will be disciplined in the interest of obtaining high-quality standards on our product.

Mr. OTTO: My question was directed and leading towards another matter and that is this: You now have automated equipment extensively in the plant that drills, measures, gauges, files, planes and does a great deal of the work involved in the manufacture of engines and other parts, do you not?

Mr. SMITH: This is in an engine manufacturing assembly plant.

Mr. OTTO: Have you ever inquired into a substitute method of inspection; that is, by automated equipment, so that as each particular piece of work is assembled it is automatically inspected by machine, and that portion which is not properly done is automatically diverted to a repair?

Mr. SMITH: We were discussing a car assembly plant. In the machine tool plants, this is done. This is done automatically. The machined parts are checked out automatically and if the part is wrong it is then sidetracked to continue with its further operation.

Mr. OTTO: Why not the assembly?

Mr. SMITH: Because the assembly of component parts is not done by a machine, and the exactness of a human being doing these operations cannot be compared to the exactness of a machine which is working to a thousandth tolerance. In the assembly operations of a car plant, we do not work within these tolerances and, therefore, to control and have a machine indicate this would be impractical.

Mr. OTTO: Well, I beg to differ with you. If a machine can discard or find out the trouble within a thousandth of a tolerance, it could certainly be geared down to find out within a hundredth, a tenth and so on. I shall put it to you this way: The refrigeration manufacturing industry has adopted this method and the computer, aircraft and communications industries have already adopted this method in all countries. In other words, there is no inspection except by machine. If a part is not assembled properly as it goes through the line, it is automatically discarded through this automated equipment and it reverts to the production line or the repair line.

Mr. MEHRER: May I answer that? I think you are referring to the same thing as is referring to in the machine tool industry. Certainly, many of our vendors building one specific kind of item are set up that way. We have the automated inspection equipment, but you are trying to bring this down to an assembly plant, which is completely different. In the airframe industry where they build airplanes they do have inspectors and they are not automated. If our technology were that far advanced, we would have robots putting the nuts on, oo.

Mr. OTTO: Well, I shall put it to you this way: I know that discussion has taken place in this field over the past seven years, and when I speak of automated inspection I speak of assembly inspection and not manufacture. In other words, in the computer the IBM uses these automated machines to inspect and pass on the assembly portion of the machines and not on the manufacture.

Mr. MEHRER: They do the same thing as we do with our electrical checking equipment. They have pieces of equipment that will check a circuit functionally, and that is not what we are talking about in an automobile assembly plant. We are talking about the quality of a metal finish job, the quality of a paint job, the quality of a nut being drawn down, a cotter key being split. These are not the things that they check automatically in any industry.

Mr. OTTO: I am not saying they do. I am asking whether you are you denying that it would be possible to—

Mr. MEHRER: No, I am just saying that our technology is not so highly developed at the present time, any more than we can put a robot on to do an operation on the line. Essentially you are indicating that we should have a robot doing the job. If we can have something check it, we can have some kind of mechanical man that will do the assembly when we get that far advanced but we are not there.

Mr. OTTO: Well, my question was, have you investigated this?

Mr. MEHRER: Certainly. We are taking advantage of every bit of automation we can. Unfortunately, automation has not lent itself to the assembly of an automobile in any sense of the word as it has to other basic manufacturing areas, because our unit is so completely different. We can run for a million vehicles without ever duplicating the first one. We have that kind of variety and complexity in our build, with our models, colours and all of the accessories that go into the automobile. There are two completely different things when you are talking about building one item consecutively and when you are talking about building an automobile to the customer's requirements.

Mr. OTTO: The reason I am asking this is because I am trying to get down to the basic contention between the two briefs presented on the two days. You have stated that there is no room for error; or almost no room—there should not be any except for the human error, that is, the human error has been presented and evidence has been presented. I know that faulty vehicles do come off the assembly line sometimes. I know that in the Ford plant, especially, where the workers know or have a pretty good idea which cars are going to be executive cars, the human element enters.

Mr. MEHRER: Why would you say, especially, in that situation?

Mr. OTTO: Well, I was going to give an illustration, but perhaps I had better not.

Mr. MEHRER: May I clarify the executive car?

Mr. OTTO: Yes.

Mr. MEHRER: We do have a lease arrangement within our company for people who can lease cars from the company. Those cars are predelivered the same as any of the others we are talking about.

Mr. OTTO: No, I am speaking of the production line workers exercising their human frailty and sometimes causing a bit of a disturbance in the cars that they know are going to be executives' cars. However, what I am saying is that you have presented one side and said there should not be any errors or any faulty cars. We have had evidence, on the other hand, that there are.

Mr. MEHRER: Well, you have evidence that in every form of human endeavour there is variance.

Mr. OTTO: Yes, in the human element that you said you count on.

Mr. MEHRER: Yes, we admit the human element.

Mr. OTTO: Obviously the inspection and reinspection does not work. What suggestions which include the human element do you have to ensure good cars coming off the production line?

Mr. MEHRER: We have just that capability at the present time—the human capability to build, to perform or to do.

Mr. OTTO: I wonder whether I could ask a question of Mr. Conlin of General Motors? Mr. Conlin, General Motors are taking over an interest in more and more of the dealerships and distributors throughout the country; that is, they are buying out the interests of the dealers. Do you count—

Mr. CONLIN: Let us stop at that point. Would you go on to explain what you mean by "buying out the interests"?

Mr. OTTO: Well, I should put it this way. General Motors is more concerned from year to year in having control over who owns the dealership franchise. I am not objecting to this. I only want to ask you whether it is your intention to put some of the burden of inspection, or the cost of repair, we will say, on to the dealers?

Mr. CONLIN: No. Let us get back to the first part of your question. General Motors is always looking and searching for the best and finest prospective dealers in order to best serve our customers in the areas in which our cars are sold. We certainly are not asking the dealer to absorb any more burdens than he has been carrying for years. What we certainly are doing is trying to instill in our dealers that the customer is all-important. At the moment—and this has not happened today or yesterday—we have people in our sales organization who are continually contacting the dealer and telling the story—and this has been going on—that the customer is our most important aspect of this democratic country.

Mr. OTTO: Mr. Conlin, I take no objection to what you have said. I am only asking whether it is now a company policy to allocate a certain amount of the inspection in safety to the dealer for which you pay him—I am not saying you are going to do this without paying him—rather than hope that the car will be perfect as it leaves the plant. Let me give you an example.

Mr. CONLIN: May I answer that question?

Mr. OTTO: Yes.

Mr. CONLIN: It has been and is our aim, as I stated in my brief this morning, to do more and more each year, each day, to deliver that product to the dealer in the finest condition that we know how to get. Now, we expect the dealer, when

the product arrives at the showroom—and this is part of his contract as I understand it, and although I am not in the sales organization, I think I understand it fairly clearly—to put that job in delivery shape. What we mean by that is this: there can always be error in anything you do today. You may err before you leave here today in some shape or form, and so may I. To put this car in delivery shape means that the car should be washed and polished because it does get dirty during transit. We ask them to check the gas, oil and these types of things. We give them a list, which is in this brief, most of which we have already done, but this is a precaution so that we have a satisfied customer beginning with the delivery of that automobile.

Mr. OTTO: Has this always been the practice between the manufacturer and the dealer?

Mr. CONLIN: Yes, but we are both working, I think, more diligently today, the dealer and we within the plant. Personally, I spend more time in my particular job on quality, I guess, than any other single thing I do, even though quality comes under the Director of Quality Control reporting to the President. We work very close by, hand in hand, on problems. Never in my history—and I have been in the automobile industry for 40 years—as a manufacturing person have I ever tried to overrule or persuade the Director of Quality Control or his people to let something go.

This goes back many years ago to a man by the name of Mr. R. S. McLaughlin who said that in General Motors there is only way to do a job, and that is the best. This was followed up. I have been under many people in my day and I have never been told by anyone in General Motors of Canada at Oshawa to ease up with regard to quality. In addition to that, I work more today, as I said before, on quality from the standpoint of getting our production supervision deeply interested in quality. Just recently we went across all our plants on a zero defect program.

Mr. OTTO: Mr. Conlin, I wonder whether I may interrupt you? I do not want the Chrysler people and the Ford people competing with each other to see who has the best quality control. I know it is condemning, but we do not condemn you. The witnesses prior to this condemn you. Of course, you say it is white and they say it is black, but what I am trying to find out is just exactly what can be done, or in what way we, as members of Parliament, can do something. I do not want to know about the quality or the difference in quality among several makes of cars, and you have answered in this way.

Now, I have just one other question for Mr. Mehrer. Do you consider labour and management to be a team, or do you consider them antagonists in some way or other?

Mr. MEHRER: I guess I can say unequivocally that they are a team; otherwise, we would not be doing much producing. I do not think we could work unless we were.

Mr. OTTO: Do you think that the production line or the production staff or the hourly-rated employees are concerned about producing not only a good safe automobile but producing it for a price that can make a profit so that they can keep their wages? Do you think this is a prime concern on the labour side as well as your side?

Mr. MEHRER: I fully believe it is. I would have to think they are that responsible. The only other thing you could say is that they are irresponsible, and certainly they cannot be accused of that.

Mr. OTTO: Then why do you think they brought these briefs in the first place?

Mr. MEHRER: I think we tried to clarify to an extent that there is a lot of misunderstanding in the knowledge of a specific job or a process, and I just do not believe that an hourly man would have such an encompassing knowledge that his statements could be presented in their proper form or their proper context.

Mr. OTTO: But surely, Mr. Mehrer, you do not imagine that these people came up here in good conscience, unless they were concerned about the public safety. Do you think they did it to spite the company?

Mr. MEHRER: No.

Mr. OTTO: Why did they come up?

Mr. MEHRER: Can I read you a little item that happened in our plant just the other day?

Mr. OTTO: If it has anything to do with this question.

Mr. MEHRER: Well, I think it explains people, and I think it explains the fact that we work with people every day. We think we have some understanding of people. If there were not differences of opinion, not necessarily of intent but of ways of accomplishing something, there would not be the need for this meeting here today, because none of this would have arisen. I do not think it was malicious intent on anyone's part. I think it was concern, and I think they can be commended for their concern. Unfortunately, concern is not always directed into a proper channel, sometimes it can get out of the channel. It could be over concern, or maybe it could be misunderstood concern. So, I think you have to look at their reasoning and you have to look at our reasoning.

Mr. OTTO: Thank you.

The CHAIRMAN: Mr. Wahn, then Mr. Pugh in that order.

Mr. WAHN: I have been told that in certain parts of electrical industry standards are set by the Canadian Standards Association, and this association checks the adequacy of the system of faulty control and testing procedures in the plant, and also spot-checks to see that these procedures are, in fact, being carried out. I would like to ask Mr. Kiborn, Mr. Mehrer and Mr. Conlin whether they would see any objection to such a procedure or a similar procedure being followed in the case of the automotive industry?

Mr. KIBORN: I would prefer, sir, that Mr. Lacy answer that question on behalf of Chrysler.

Mr. LACY: I think you referred to the appliance industry, Mr. Wahn. I think you will find that this is a requirement of the Hydro Electric Power Commission, in Ontario at any rate; I cannot speak for the other provinces. But you cannot hook an appliance into their lines without having an approved appliance. I think that is the basic reason they have to be approved. I do not think this is a government regulation; I think it is a regulation of the HEPC in Ontario.

Mr. WAHN: The HEPC is publicly owned, at any rate. My question really is whether you see anything objectionable in such a system being established for the automotive industry, whether it is established by the government, or by a public authority set up under governmental auspices?

Mr. LACY: I see some difficulty in it, primarily because of cost. The cost of approving such a device to standards through an agency of this sort—and the closest we have in Canada is the Canadian Standards Association—I think would be a staggering one.

Mr. WAHN: I was not thinking so much of approving each individual automobile, but rather the general principle. The system of quality control, particularly in automotive manufacture, would be disclosed to this public association which would pass upon the adequacy of quality control and testing. They might do some spot checking to make sure the system, if it is approved, actually is being followed in the plant. Would this pose any great problem to the automotive industry?

Mr. LACY: We do have certain design standards now, issued by the provinces. There are no federal regulations to my knowledge, because I believe this is a matter which falls under provincial jurisdiction. But, we do have many design standards. I know of no standards for quality control, as such, and I am not in a position right now to know whether I would be for it or against it. It would depend on what kind of control they would require, or what kind of verification they would ask for.

Mr. WAHN: Perhaps I may not have made my question entirely clear. We have been told by each automotive manufacturer that he has a very careful system of quality control which has been described in some detail, and we have seen these systems in operation on our visit to the plants in the Windsor area. But, so far as I am aware, these quality control procedures and testing procedures have not been officially approved by any public board, or any governmental department. I am not suggesting they are not completely adequate. What I am asking is this: Would the automotive manufacturers have any objection to disclosing to a government public board the quality control procedures and testing procedures which are being followed in their plants and having them approved by the government or by a public board, and then having spot checks from time to time in their plant to make sure that, in fact, these procedures which have been set up by the automotive manufacturers themselves, and approved now by public board or by the government, are being followed?

Mr. BANNATYNE: Mr. Chairman, if I may, at least on behalf of Chrysler, I would like to repeat what Mr. Kiborn indicated today. The general subject of government review or participation in this was expressed. We are open to any suggestion that will help us to improve substantially and effectively the quality and safety of our products. I think you are suggesting a proposal of this general nature in this area but it would be a case of getting into some specifics in order to respond directly. But, we would not object to examination of this type of proposal.

The CHAIRMAN: Do you want to add anything Mr. Mehrer or Mr. Conlin?

Mr. MEHRER: Well, for our company, I guess I would have to more or less second Chrysler's stand. I think we mentioned it in our conversations, and I do not think any of us would be against anything that would improve the image of the industry and the quality of the vehicle we produce. I do not think any of us have any objection to anything. But, we are only giving personal opinions when we say that we do not know what government inspectors could add to our business. I do not know whether there is a better method of quality control. Certainly, if there is, I guess we would be most interested in whoever could develop it if they thought that ours was ineffective. I would have to take the same stand that these gentlemen take, that we would definitely not be against anything that would be an improvement for the vehicle.

Mr. CONLIN: Mr. Chairman, I turn this question over to Mr. McLaughlin.

Mr. McLAUGHLIN: Mr. Chairman, we certainly would not have any objection to telling anybody about our quality control procedures, as evidenced by our appearance here today. We only would make the plea that should certain quality control standards be set up for Canada, and certain quality standards be set up for the United States; the government attempt to come to an agreement with the United States government to have similar kinds of quality control standards, so that we do not have to deal with both types. This could cause us a lot of trouble.

Mr. KIBORN: Things vary from plant to plant too, you know. What might be good in one area might not necessarily apply to another. While I think we are all saying in a lot of ways we do not object and that in the abstract it is a good idea, I suppose, on the other hand, we say we do not approve abstract ideas, either. In other words, really you have to get down to cases before you can make an assessment of whether you think it is acceptable or not.

Mr. WAHN: Mr. Chairman, I think I have quite a clear impression of what the views of industry are on that point. My second question is this: I have the impression from evidence given that, in the case of vehicles bought by the federal government, each vehicle is checked by a federal government inspector. Is that correct?

Mr. BANNATYNE: May I respond, Mr. Chairman? When federal government vehicles are ordered through our company, a government inspector does come into the plant and he checks only the final product. He does not check operation by operation, step by step, down the line, as was implied at the meeting of March .. In effect, in our opinion, basically he is taking the position of the retail customer. A car which we build for general public sale proceeds from our plant to a dealer, who then goes through the pre-delivery details of inspections we have mentioned, and delivers it to the customer. These federal vehicles do not go through dealers for delivery. They are dispatched directly from the plant to the area of usage. So we perform, on these vehicles, the same pre-delivery service that the dealer would otherwise perform. At this point, the government inspector comes in and reviews that vehicle before it is sent on its way. So he is not, as I say again, checking item by item, step by step assembly. He is looking over the vehicle to see that it is satisfactory to be put on the road for its particular use and also checking out certain variables that arise in the specific government specification, as was mentioned by all of us this morning.

The CHAIRMAN: Mr. Mehrer, do you want to add anything?

Mr. MEHRER: I really do not think there is anything further to add. Essentially, that is the function of the government inspector in the plant.

Mr. CONLIN: I have nothing to add, I think it was very well explained.

Mr. WAHN: May I ask, Mr. Chairman, whether Mr. Conlin has any objection to having that type of government inspector in his plant?

Mr. CONLIN: Well, Mr. Chairman, and you sir, they are in there.

Mr. WAHN: Evidence was given by the Union representative that for an extra \$50 payment any person can have a special inspection carried out on his particular vehicle. It takes about two inspectors, I think, to inspect about four cars a day, for which this special \$50.00 payment is made.

Mr. KIBORN: I know exactly the point you are alluding to, and with your permission I would be glad to answer that question. We alluded to it in our brief today, and I would just like to elaborate. Every car that is delivered to a retail customer receives the pre-delivery service which is performed by the dealer in accordance with the documents that were filed by each company today.

Now, on occasion a retail customer of a dealer, say in Regina, is coming east on a holiday and wants to buy a car and he deals with his dealer in Regina. He says: "I would like to take delivery of that car in Windsor", or Oakville or Oshawa, as the case may be. Now, on the dealer's behalf—and each company, I believe is the same—speaking for Chrysler we have a retail delivery program, and on behalf of the dealer we do the pre-service delivery for the dealer. We use the same form that the dealer uses, and we check off the same items that the dealer would check off. So, when that customer comes to Windsor, the car is ready to be driven after the same checks that the dealer makes. It is not an accessory or an option or something that is special that one person can buy and somebody else can not. Every customer gets it. As we mentioned, government vehicles receive the pre-service in the factory, because—

Mr. WAHN: Is there an extra \$50 charge made for that?

Mr. KIBORN: There is a charge made to the dealer. Normally this is the dealer's responsibility to the customer.

Mr. WAHN: Why does he have to pay an extra \$50?

Mr. KIBORN: I do not know; you will have to ask your dealer that. I do not know what the dealer is charging his customers. But, whether we do it or whether the dealer does it, every retail customer gets it. Now, in the reverse situation, if we have a car—say a company car—that is going out to the field for one of our sales representatives, then we will have that car which we own pre-serviced by a dealer, usually in the field.

Mr. WAHN: The purpose of my question was to find out how it was that it took two inspectors a day to inspect four cars for which a special charge was being made whereas, according to Union members, a very large number of cars were given final inspection by a single inspector in a single day.

Mr. BANNATYNE: If I may clarify that, unfortunately they lumped the two things together, more or less. As we are trying to establish here, the pre-delivery

service inspection we are talking about is something entirely different and the next step beyond the end-of-the-line factory inspection. Now, if two men work for a day pre-servicing four of these vehicles for the types of customers Mr. Kiborn has just described, this works out to about four hours a car, to road test it, to go through these routines, clean it up, wash it, gas it, oil it, and so on. This is about what a dealer spends preparing each of his cars for delivery; somewhere in that neighbourhood of time.

Mr. WAHN: I have a final question. I do not want to put anyone on the spot very much, but I believe Mr. Conlin mentioned that he did not want government inspectors in his plant any more than I would want government inspectors in my home. I can quite understand this point of view. Does the same apply to Chrysler and Ford, or has this question already been answered?

Mr. BANNATYNE: I will try to answer that. In a specific sense we cannot give you an answer because it is not really a specific question. In a general sense, we are open to pursuit of any ideas that will effectively improve the product if this is what will occur.

Mr. WAHN: I believe Mr. Pugh had a supplementary question.

Mr. MEHRER: Mr. Chairman, could I interject here? In both the other briefs there was an answer to the question of government inspectors, but not in the Ford brief. Could I submit the brief for Ford Motor Company on the government inspection situation without reading it so you will have all three?

The CHAIRMAN: Well, is this not essentially what has already been read?

Mr. MEHRER: Essentially, but it is not in the form of a submission at all.

The CHAIRMAN: Can we put it in the proper place? We will just leave it. Statement on government inspection, Edward W. Mehrer, Manager, Oakville Assembly Plant, Ford of Canada reads:

In reply to the question as to whether or not we think government inspectors should be assigned to automotive assembly plants in Canada, let me first state as a declaration of principle, that we do not consider it to be appropriate for us to advise government on expenditures of public money.

From an operating viewpoint, there are two fundamental factors which seem to illustrate the impracticality of this suggestion. First, who will train the government inspectors? We will, of course. Second, who will supervise them? Would this not require a costly governmental bureau of automotive experts. The net effect, then, would be that the public would pay for exactly the same kind of inspection techniques and personnel as are now being provided by the industry itself at no public cost.

Mr. PUGH: Mr. Chairman, I would like to start off with the fact that Mr. Conlin said on receipt of the UAW brief they went to town to try to chase these questions back. Perhaps my question should go to Mr. McLaughlin on the report again. I am interested in this from the point of view of labour and management. It is perfectly obvious to me that the brief submitted by the UAW described things which should have been taken up in each individual plant as you went

along. My first question is: Have you had similar reports and what was your action? This is at the plant level.

Mr. McLAUGHLIN: I am sorry; I do not quite understand what you mean by, similar reports?

Mr. PUGH: Automobile workers came down here and, according to their brief, certain things had not been done which should have been done. Certain actions should have been taken and certain inspections should have been made. There was laxity somewhere and, as a result, automobiles were turned out to the public with certain deficiencies. Based on the statement that each and every gentleman here today has made that you are very interested in quality control and very interested in your image, what steps do you take in your plant to check these things, apart from the controls you put on? What steps do you take to get management and labour working together? In other words, why should we in the Committee hear all these complaints when in actual fact they could well be made to management?

Mr. CONLIN: Could I answer that? I think I know very clearly what you are referring to. As I stated in my brief and elsewhere, I was certainly shocked and disappointed at some of the statements made in the union's brief. Now, as far as I personally, know these areas were not discussed or brought up to management in the plant.

Mr. PUGH: Now sir, could I ask another question and it is one that originally I asked Mr. McLaughlin. Were similar instances brought up to management in the plant through the proper channels over the past number of years?

Mr. CONLIN: I would have—

Mr. PUGH: Mr. McLaughlin has that department.

Mr. McLAUGHLIN: I was going to say that this problem has worried me, too. Like Mr. Conlin, we were very concerned about the nature of their brief. I think my summing up of it probably is that it is more a matter of communication and misunderstanding by these people. They do not see the over-all picture. They are in their own small area of the plant and they do not see the total picture where we have thousands of employees, thousands of people working; it is very difficult for them to see the whole picture.

Mr. PUGH: Yes, and I can understand the explanations you have made for the various events which appear in your brief. But I am talking about—surely there must be a—

Mr. McLAUGHLIN: May I go a little bit further and say that certainly every day I drive a car right before it is to be shipped from our plant. Perhaps sometimes two or three times a day I drive a different car just to have a feel of how our quality is going. Always you can find, if you want to be really overly-critical in some cases, something that needs attention. So, you get on it right away and get it fixed. A lot of people are doing this as well every day.

Mr. PUGH: When you have discussions with your men—I am not talking about the union—all along the line looking for this ultimate in quality or a better way of doing it I suppose if you have a series of reports coming in from one man would you mark him down as being a pretty observant fellow? How do you

make it known to workers that you would like to have this? Do you have an incentive program?

Mr. McLAUGHLIN: We have a suggestion plan which pays a tremendous amount of money every year to employees who put in suggestions.

Mr. PUGH: A tremendous amount—how much would that be?

Mr. McLAUGHLIN: The major award is \$6,000. I do not know whether anyone has the figure of how much we paid but last year. Seven people, apparently, did get major awards last year, but hundreds of thousands of dollars every year are paid out in suggestion money. These are good suggestions, too. Many of them are most helpful in the areas of quality, safety and cost.

Mr. PUGH: Most gentlemen today have indicated they were a little hurt by the UAW brief that was presented here. I was trying to get to why such a brief would be presented. You say there is a misunderstanding, perhaps, of the total quality concept by an hourly wage employee. Would not those employees have somebody they could go to, or should go to, or be directed to go to, putting it on a mandatory basis, to point these things out?

Mr. CONLIN: May I answer? I will use only one example of the number of things we covered with you this morning. It is the question of work standards. Now, our union has never been reluctant at any time to bring forth a grievance on work standards.

Mr. PUGH: And management is prepared to receive them?

Mr. CONLIN: Oh, at least every other day.

Mr. PUGH: Well, are you hurt every other day as you were by this brief?

Mr. CONLIN: Now, the point is that for the period of the last few months I do not suppose—and I would ask our general superintendent from the chassis division to confirm this—was there an outstanding work standards grievance in the chassis plant. Mr. Chairman, may I ask Mr. Evans to comment on that point?

Mr. EVANS: This is quite true, gentlemen. We solve many problems in this same area each year in our plant without great difficulty and without a trip to Parliament hill. We have since 1937, and really we do not need any assistance in the area of work standards administration.

Mr. CONLIN: The point this gentleman was making is that there seems to be a feeling there must be a problem. I am saying we have not got an outstanding work standards grievance in your plant.

Mr. EVANS: This is true.

Mr. CONLIN: To the best of my knowledge.

Mr. PUGH: Just let me close off. It would seem to me that I still actually do not have the answer to the question. This is mandatory procedure. You are an employee. You see something wrong and you must report it. That is not an inspection. This is the man on the job saying: My God these things are running through funny. But, I do not know what can happen in an automobile plant; they look very efficient to me. But is he duty bound to report that as your employee and has he been so informed?

Mr. CONLIN: Very, very definitely, yes. To make doubly sure, we have this new zero defect program and this is just exactly what we have asked every single employee in the plant, hourly and salaried, to do. I might also add, Mr. Chairman, that over the years our labour-management communications and dealings have been on a very high level. This is one of the reasons for the inclusion of some of the statements I made this morning. This comes as a complete surprise and I have not got the answer.

Mr. PUGH: Well, Mr. Chairman, I do not want to go through all the other plants but if Ford or Chrysler have anything to add to that I would like to hear it.

The CHAIRMAN: You could ask them whether they agree.

Mr. MEHRER: Mr. Chairman, this is an addition to it, I guess. All through the brief there are things other than safety. There are things other than inspection and quality control. There is a reference to improper work standards and there are allusions to not having the right to strike over work standards which they feel their U.S. brethren have. The allusion indicates that this is something that would make things different, but I do not think the U.S. plants are lower in productivity than our Canadian plants and they do have the right to strike.

Mr. PUGH: I might just go on to say—

Mr. MEHRER: I am just trying to get to your point of what is behind the union's submitting this. Some of their remarks indicate that perhaps the quality in the U.S. is better than in Canada which we know by comparison, since the auto trade agreement, is not true. So, I guess I would not know what they are really looking for. I do not know just what it is that caused them to do that. Are they looking for new labour legislation? Are they looking for contract changes? Are they really looking for something that improves safety? I just do not know. It is a kind of pronged approach that they made and it is not just black and white on safety.

The CHAIRMAN: Are you through, Mr. Pugh? Mr. Bannatyne, do you want to add anything?

Mr. BANNATYNE: Only that as indicated here, really, I do not presume to interpret what they had in the back of their minds or their reasons. We are concerned with certain statements that have been made, which, in many cases, we feel were misleading—intentionally or otherwise, but at least out of context—and perhaps incomplete and these are things to which we feel we have the answers. We have endeavoured to provide all of you today with information on our system, including such things as work standards, that production does not overrule quality control and these things that were generally in their brief.

Mr. PUGH: To follow along on that, regarding the price factor of automobiles generally, a quality product and safety, do you feel that any price conflict which has been going on among the automobile companies would have a tendency to produce a cheaper car with, perhaps, less safety? Let us refer to one thing specifically, such as a line of tires cheaper than the normal person would want to use.

Mr. KIBORN: No, I do not think that is true, sir, and really to try to get into this subject is a little out of the context of what we were prepared to do here

today if we are to get on to the question of pricing. You know, we were directing our minds to certain allegations here. The accepted quality of the items going into the cars, I think, over the years, pound for pound, has improved immeasurably and certainly there has been nothing in that area of which I am aware at all.

Mr. PUGH: Just to close this off would you like, then, to see people paying just a little bit more for their automobiles so that you could put a better . . .

The CHAIRMAN: How do you finish that question? That we get a better automobile?

Mr. MEHRER: Mr. Chairman, may I make a statement? If the customer elects to pay a bit more he has the privilege of ordering any type of tire he wants. He is not restricted to the kind the manufacturer puts on, so it is not a question of whether we want him to, it is a question of whether he wants to.

An hon. MEMBER: May I ask a supplementary question?

Mr. PUGH: Can I just finish this off because I only want to go one step farther and this is what I am leading up to. You mentioned before standards in the U.S. and Canada. Would you not say that it is absolutely essential, because of the auto agreement, that we have the same set of standards in the United States and in Canada?

Mr. KIBORN: Yes; that is very same.

Mr. GRAFFTEY: May I ask a supplementary question before this line of questioning is finished, Mr. Chairman?

The CHAIRMAN: If it is just one, Mr. Grafftey. I have Mr. Tolmie and then you in that order on my list.

Mr. GRAFFTEY: I have one supplementary question to the industry. Since the labour brief was presented to this Committee, have any changes been made in any of the automobile plants in Canada regarding safety inspection or other safety procedures?

Mr. MEHRER: Not in Ford, Oakville.

Mr. TOLMIE: Mr. Chairman, I would like to ask whether it is true that certain plants now have their quality control departments amalgamated with and under the jurisdiction of the production departments, whereas formerly they were distinct, separate and independent?

Mr. BANNATYNE: Mr. Chairman, at Chrysler our quality control and our production management and the chain of command from the people on the assembly floor up through their supervision is separate and distinct, and we have filed our organization chart to reflect this. There is a quality control manager and there is a production manager. The representative from our particular local implied that we had changed to put one over the other. A number of years ago the inspection on the floor was amalgamated with production, but we actually went away from that to the separate system that we now have. So, the union statement is a complete reversal of the actual situation.

Mr. MEHRER: As we stated in our brief, our system of operation and our method of authority has existed since world war II without any change at all.

Mr. McLAUGHLIN: Mr. Chairman, we have repeated twice in our presentation that I report direct to the president of the company in the same way as Mr. Conlin.

Mr. TOLMIE: I know that you report direct but has there been any physical change in the department? If they have not amalgamated the assertions in the union's brief are incorrect. Is that right?

Mr. McLAUGHLIN: That is right, they are incorrect.

Mr. TOLMIE: I have just one more question. I believe that the union's position really is that recently, for various reasons, the automobile industry has not stressed quality control as much as formerly. Perhaps they have not spent as much money on it and the whole process has deteriorated. Now, your position is exactly the opposite; not only is your quality control as good as in the past but, perhaps, has improved. So we are in the invidious position of not really knowing which faction to believe. To resolve this, would the various companies present be willing to submit a statement of money spent on inspection and quality control for each vehicle, say, for the last three years as opposed to the three years prior to that? If we had that I think it would assist the Committee in determining whether the stress on quality control has diminished, increased or remained static.

Mr. KIBORN: May I make a comment on that question? I could not say today what sort of a job would be involved in breaking figure down to provide a dollar cost, but I think, from a standpoint of manpower and inspection time and so forth, this information could be made available. Now, by the same token, you ask us to provide this information to show that there has been an increase, and yet the unions simply made a false statement that there has been a decrease, the same sort of statement they made regarding production authority over quality control. We have all made statements here today and filed our organization charts to show that the reverse was true. We could get some evidence, as I have said, on manpower and time. I think this would be quite easy. The cost could be difficult. I am not a financial man so I do not know how it could be broken down, but I just wondered whether anybody asked the union if they had the evidence to show that it was less. I do not know. We could, perhaps, come up with some information. I would be quite prepared to supply what information we could, at least with regard to hours and the number of people. I could not say about costing; I do not know whether it could be gathered that easily.

Mr. TOLMIE: Just to follow that a little further, assertions were made against your companies that quality control has diminished and the inference is that it has done so because you are interested more in production than you are in quality control. This is the allegation; this is the general accusation against the industry. Therefore, in order to refute this and show beyond a shadow of a doubt that this is untrue, you would be very willing—in fact, you would like very, very much—to reveal this in dollars and cents. If you could show this Committee, for example, that you are spending more time and more money on quality controls, then the whole argument of the union is gone.

Mr. MEHRER: Mr. Chairman, could I—

The CHAIRMAN: Mr. Mehrer and then Mr. McLaughlin.

Mr. MEHRER: The situation is such a rapidly changing one since the auto pact and I am sure this gives rise to their feeling. For instance, in the Oakville assembly plant, we have eliminated dozens of sub-assemblies on sheet metal. We now get the built-up sub-assembly from our stamping plants. We have eliminated two car lines from our plant and all of these things took heads to inspect the different processes or operations within our organizations. If you were to take 1964 and the fact that you were inspecting a lot of sub-assemblies and you were still getting the same fixed line volume and you tried to transpose that to today, certainly the average inspector per vehicle would be less because these sub-assemblies are gone and those inspectors are gone. I do not know how you would recreate a sensitive or truthful enough situation that any figure would be meaningful to you, because you would be at our mercy even in the answer we gave you.

Mr. TOLMIE: I would be willing to be at your mercy if we had some concrete statistical evidence.

Mr. MEHRER: I will give you just a bland statement or a sincere statement. We are spending as much on quality control this year as we spent last year and approximately 100 per cent more than we spent on inspection at world war II.

Mr. TOLMIE: This is what I am getting at. You have given a statement. Now, would you and the representatives of the other companies present be prepared to furnish the Committee with statements to this effect?

Mr. MEHRER: We can give it to you on a head count, if that is what you want.

Mr. TOLMIE: Yes, just some detailed statement so we have some concrete evidence.

Mr. MEHRER: Yes, we are prepared to get together whatever information we can and supply it to you.

Mr. TOLMIE: Would General Motors be prepared to do so?

Mr. McLAUGHLIN: Mr. Chairman, I would first of all say that we agree with Mr. Mehrer 100 per cent. We have dropped Corvair production; we have dropped the Buick big car and the Oldsmobile big car production this year in line with the trade agreement policies and we have dropped a lot of our sub-assemblies, but we can make a good comparison in the Chevrolet and Pontiac big car chassis plant assembly area, and we can say to you right here and now that we have over 20 per cent more inspection now than we had three years ago.

Mr. TOLMIE: I do not want to pursue this any further, but would you be willing to supply us with statements showing the breakdown—the increase or decrease as it may be—over, say, the past two or three years so we will have some tangible evidence before the Committee? Would you state it as a fact? I would like to see it in the form of a factual statement.

The CHAIRMAN: Can you do that Mr. McLaughlin?

Mr. McLAUGHLIN: Yes.

Mr. MEHRER: Mr. Chairman, may I just say one thing? These figures will vary with each company because each company performs functions that the other one does not and our only concern is that someone would wheel a figure round that says that Joe Blow is worse than John Doe. The figures cannot be

comparative among the companies. They can be based only on our situation as it is now as it was in the 1966 model year and as it was in the 1965 model year. They cannot be used as a comparison among industries.

Mr. TOLMIE: It would not be done in that manner. We would have to use our discretion in analysing the statements produced.

Mr. KIBORN: Yes, they are separate and distinct. We are talking here about assembly plants as opposed to other types of plants. We are here on one aspect of it and I think if you try to make a comparison it would mean nothing. The only thing that would mean something would be a comparison between what a given company is doing today and what that company did the other day.

Mr. TOLMIE: Then I take it from what you say that these statements will be forthcoming?

The CHAIRMAN: Agreed?

Several WITNESSES: Yes.

The CHAIRMAN: You will send them to the clerk of the Committee as soon as they are available. Are there any further questions? Mr. Grafftey, then.

Mr. GRAFFTEY: Mr. Chairman, I would like to ask Mr. George Lacy some questions concerning a few remarks he made before the lunch hour when we were talking about government standards in relation to the inspection of motor vehicles. Just to make sure I am on correct ground in my questioning, Mr. Lacy, am I correct in stating that you said standards mandated under the Highway and Automobile Traffic Act in Washington would affect Canada especially because of the automobile pact? Am I right in this assumption?

Mr. LACY: I may be a little bit hedgy in my answer because I could be misinterpreting your questions. There is nothing in the U.S. law that says it applies to Canada. Our company, by its own decision, decides that we will build our cars in Canada the same as they are going to be build in the States. In that regard, yes.

Mr. GRAFFTEY: In other words, especially because of the auto pact and other considerations...

Mr. LACY: Especially because of the auto pact.

Mr. GRAFFTEY: ...any decisions you make in Canada will be affected by the U.S. Highway and Automobile Traffic Act?

Mr. LACY: That is correct and beyond that a little bit. In most instances those are pretty good regulations. We are still not too certain that we agree on all aspects but the majority of those are good, and we believe they should be on.

Mr. GRAFFTEY: Leading up to my two final questions, Mr. Lacy, I think it is very important that we get a general understanding of whether there is a difference of opinion here. Do you feel that any differential between U.S. and possible Canadian standards would greatly inconvenience a North American industry?

Mr. LACY: Yes, sir.

Mr. GRAFFTEY: Does this mean, Mr. Lacy, that in your view, because of the above mentioned questions, the Canadian government need not adopt standards for public purchases because of the United States initiative?

Mr. LACY: You can make that conclusion or the Canadian government could decide to act in concert with the American government. They have acted in concert in terms of the trade agreement; perhaps they could in the safety field.

Mr. GRAFFTEY: Not acting for Chrysler, Mr. Lacy, but in your capacity as an official of the Motor Vehicle Industry Association of Canada, have you made representations to the Canadian government to the effect that we do not need Canadian standards for public consumption because of the United States initiative in this regard?

Mr. LACY: I do not think I have said it in exactly that way, and I see a member of the Canadian Government Specifications Board here, and he can correct me if I put it incorrectly. I think what I have said many times is that if you wish to write standards for Canada, please make them the same as the U.S. standards. I can understand there is a certain degree of feeling that we are Canadian and, damn it, let us have our own laws and not use United States laws, and I guess this is understandable to most Canadians. Therefore, perhaps we should have our own laws, but I am saying that since we have this United States-Canadian trade pact, we would appreciate your resolving any differences between the Canadian requirements and American requirements at that level, and then come to us with a common statement.

Mr. GRAFFTEY: Is it not a fact, Mr. Lacy, that the standards that have been drawn up by the government now and codified go farther than the U.S. standards as now mandated and invoked under the traffic act in the United States?

Mr. LACY: In some respects, yes. In other respects they purport to say exactly the same thing but sometimes the language gets in the way of the intention. Unfortunately, we do not like to see any regulation go out with different language because then you get the judiciary involved in what you actually mean. I do not mean to imply that lawyers make work, but I would like to see it the same word for word so there can be no possible misunderstanding.

Mr. GRAFFTEY: I have a final question, Mr. Lacy, and I think it is terribly important for the good understanding of the Committee and relations between ourselves and MVI. From a very brief remark you made here this afternoon, is it still your opinion that jurisdiction for the building of safer cars at the production level is a provincial responsibility?

Mr. LACY: I am really not competent to pass judgment on it, Mr. Grafftey.

Mr. GRAFFTEY: I know, but this afternoon you indicated that—

Mr. LACY: No, no; I merely said that it was my understanding—and I think the understanding is correct—that it was established as a provincial jurisdiction. I made no comment on whether I thought it was right or not.

Mr. GRAFFTEY: I am not going to comment, but I think I would like to have the record correct.

Mr. LACY: If there is any misunderstanding of what I did say, I will now say that I believe it is the provincial jurisdiction to legislate on motor transport. Whether this is correct for Canada or not, I have not the foggiest notion. I sincerely believe that. I would say that occasionally I would like to deal with one government instead of ten but there are better minds than mine on this subject. I think this is a flaky one that I would not like to get involved in.

Mr. GRAFFTEY: I think you are very wise. Thank you very much.

The CHAIRMAN: Mr. Choquette, has a question. Is it a supplementary on this legal problem?

Mr. PUGH: I have one question, which you will probably be able to answer very easily.

The CHAIRMAN: Yes. Mr. Pugh.

Mr. PUGH: I was just wondering whether the U.S. standards which have been brought in produce a bar in any way to European automobiles being imported into the United States?

Mr. LACY: I would be hazarding a guess concerning what the American governmental authorities' interpretation of the act would be, and I think, Mr. Pugh, that really I should not try to do that.

Mr. PUGH: You sound like the Secretary of State more and more all the time. I have to ask another question, then.

Mr. LACY: If I stay ahead longer I will get more of that question.

Mr. PUGH: I asked about the law in the United States and you are suggesting that the Canadian law should be exactly the same. Now, if we had the same law, I ask you whether it would affect the import into Canada of European automobiles? Would there be any bar on any models that you know of?

Mr. LACY: I may not be answering the question directly, sir, and I can speak only for myself and, I think, partially for my company. I cannot speak for the rest. I do not think that the Canadian auto industry—at least, this is my feeling—is going to try to use legislation of this sort in any way to curtail competition for car business in Canada. I think it would be unfortunate if we tried to use this device to bar all European imports, either temporarily or permanently, just to give us a bigger share of the business. I do not think that would be fair to the customers that come to us.

Mr. PUGH: But in any event, you know of no bar at the present time?

Mr. LACY: I know of no bar in Canada. I do believe there may be some bars coming up in the United States but really I do not know whether they will be enforced rigidly or not. I honestly do not know.

(Translation)

Mr. CHOQUETTE: My questions are for any of the witnesses who are here before us. As a preliminary question, I would like to ask you if the safety campaign undertaken by Mr. Grafftey has really increased the safety of automobiles?

(English)

The CHAIRMAN: That is a very general question.

Mr. CHOQUETTE: You may rule it out of order, if you want.

The CHAIRMAN: No, no. They may answer it if they wish.

(Translation)

Mr. CHOQUETTE: When an automobile is delivered to the distributors, are there any instructions with regard to safety addressed specifically to the future purchasers of these automobiles?

(English)

Mr. BANNATYNE: I think we are in a general area. Issued with each vehicle is a comprehensive owner's instruction manual on the proper use and operation of the car as well as its proper maintenance and care. I think all of these have a safety implication.

(Translation)

Mr. CHOQUETTE: Has there been an investigation conducted by the various automobile manufacturers to determine whether you are really reaching the potential buyer through the car owner's manual, or is this a mere formality? In the final analysis, if the purchaser of an automobile is not aware of these instructions the publication of these booklets appears rather useless.

(English)

Mr. BANNATYNE: Yes, a sincere effort is made to ensure that each owner becomes familiar with the manual. The continuing part of our service liaison with our dealers is to ensure that their sales and service people, upon delivering the car, go through the manual with the owner and point out the areas that he should pay attention to. Over and beyond that, I think all our companies are on record with various programs and strong support of driver safety and driver education, and extensive involvement of all of the other factors involved in safety once these vehicles are on the road.

(Translation)

Mr. CHOQUETTE: If you are saying that you are very seriously concerned about the information and education of the buyer with regard to the design and operation of a car, are you also in a position to say that such instructions are translated into French for those cars sold in Quebec?

(English)

Mr. BANNATYNE: Yes, sir. The instruction manual is bilingual; one-half, up to the middle page, is in English and the reverse is in French.

(Translation)

Mr. CHOQUETTE: This applies to all companies?

(English)

The CHAIRMAN: Do any other members of the Committee want to ask questions? Mr. MacEwan, Mr. McQuaid, you were here this morning; do you have any questions? Mr. MacEwan?

Mr. MacEwan: No, Mr. Chairman.

The CHAIRMAN: What about you Mr. Forest? No questions?

On behalf of the Committee, Mr. Kiborn and you other gentlemen—I will not name you all—I want to express our appreciation and thanks for your attendance here today and for the manner in which you have presented the case for the motor vehicle manufacturers. May I conclude with the hope that this will have some ameliorative influence on both management and labour so that they will come to have an even greater appreciation than they have had in the past concerning the production and delivery of automobiles in the very best physical condition possible. Thank you, very, very much.

Mr. MEHRER: Mr. Chairman, I would like to return the compliment. We were all very happy to be able to come and present our case here today. I hope we have impressed you with a little sincerity. We have proven to you that we do have the desire; we have the knowledge; we have the facilities and we have the willingness to do everything possible to protect the customer. I would like to go a little further, because I do not think it was put in the Minutes strongly enough or properly enough.

One thing you can do for the industry that will be of the greatest importance, not only for the image of the industry, but the performance of the car and the safety of lives, is to have some kind of inspection of automobiles during their lifetime. Believe me, there is a danger on the highways. The car that gets into an accident is not the 50-mile car or the 200-mile car. I think you will find it is the car that has been in service for a length of time and has been misused and mistreated, and I hope you will consider that very seriously as a protection to the public. Thank you.

The CHAIRMAN: Thank you, Mr. Mehrer.

Mr. CONLIN: Mr. Chairman, I would also like to say at this time that it has been a pleasure to come down here and have such an open and free discussion, and I would like to compliment you on the way you have conducted this meeting.

The CHAIRMAN: Thank you, gentlemen. The meeting is adjourned.

INDEX

to

MINUTES OF PROCEEDINGS AND EVIDENCE

relating to

BILL C-26, AN ACT TO AMEND THE CRIMINAL CODE
(SAFETY DEVICES FOR AUTOMOTIVE VEHICLES)BILL C-26, AN ACT TO AMEND THE CRIMINAL CODE
(DANGEROUS MOTOR VEHICLES)PRIVATE MEMBERS' NOTICES OF MOTION
NOS. 26, 21, and 38.

WITNESSES	Issue No.	Page Nos.
Alberta, Government of Province	16	573-591
American Motors Corporation	20 & 21	711-765
Bancroft, J. A.	11	285-424
Bannatyne, R. M.	29	
Berry, W. S.	20 & 21	711-765
Briggs, C. R.	20 & 21	711-765
Brooks, Charles	27	953-979
Campoli, J.	29	
Canadian Automobile Association	10	249-282
Canadian Government Specifications Board	11	285-424
Canadian Highway Safety Council	18	615-642
Canadian Labour Congress	26	925-932
		940-944
Chrysler Corporation Limited	20 & 21	711-765
	29	
Conlin, F. E.	29	
Defence Production, Dept.	7	151-164
	26	933-940
Dodge, William	26	925-932
Drury, Hon. C. M.		
Minister of Defence Production	7	151-164
	26	933-940
Evans, A. S.	29	
Farmer, P. J.	18	615-642
Ford Motor Company	20 & 21	711-765
	29	
Frawley, J. J.	16	573-591
General Motors Corporation	20 & 21	711-765
	29	
Goodyear Tire and Rubber Co.	21	745-765
Government, Province of Alberta	16	573-591
Grafftey, Heward, M.P.	4 & 5	77-105
		111-122
Haeusler, R. C.	20 & 21	711-765

WITNESSES	Issue No.	Page Nos.
Hanna, J. E.	11	285-424
Heas, Michael	27	953-979
Kaiser Jeep of Canada Limited	20 & 21	711-765
Kiborn, R. F.	29	
Lacy, G. A.	20 & 21	711-765
	29	
Mather, Barry, M. P.	4	77-105
McMillan, C. R.	21	745-765
McQueen, J. G.	10	249-282
Mehrer, E.	29	
Milne, James	27	953-979
Mondoux, Yves	18	615-642
O'Callaghan, Roy P.	20 & 21	711-765
Paul, E. G.	10	249-282
Purdy, Carl	20 & 21	711-765
Raham, K. B.	20 & 21	711-765
Read, Don	27	953-979
Renaud, Guy	10	249-282
Richardson, E. R. S.	29	
Richardson, J. B. F.	29	
Scott, W.	20 & 21	711-765
Sheffe, Larry	26	925-932
		940-944
		953-979
	27	47-72
Southam, R. R., M.P.	3	
Smith, C. R.	29	
Specifications Board, Canadian Gov.	11	285-424
Stonex, K. A.	20 & 21	711-765
Taylor, Hon. Gordon E. Minister of Hwys. (Alberta)	16	573-591
United Automobile Workers Union	27	953-979
Wahn, Ian, M.P.	3 & 5	47-72
		111-122
Wolochow, D	11	285-424
Woodcock, W. A.	20 & 21	711-765

APPENDICES

Nos.	Page
1. Brief by Mr. Grafftey, M.P.	94
2. Synopsis of brief by Mr. Grafftey	103
3. Resolution of Canadian Fire Marshals and Commissioners ..	269
4. Brief—Canadian Automobile Association	270
5. Canadian Government Specifications Board draft Standards re automobiles 97-GP-1 through 97-GP-27 (Index p. 399)	305
6. CGSB draft "guide on factors of automobile safety"	366
17. C.L.C. Brief of February 2, 1967 to Committee	
19. Submission of Canadian Labour Congress	921

APPENDICES

Nos.		Page
20.	Brief of Local 707, UAW—Mr. J. Milne	980
21.	Brief of Local 222, UAW.	987
22.	Brief of Local 707, UAW—Mr. M. Heas	990
	“Ineffectiveness of the Quality Control Dept. in Controlling Safety Standards at Ford Oakville”.	

EXHIBITS — *In the Office of the Clerk of the Committee*

- Nos.
- Received from Senator Warren G. Magnuson,
Chairman of the Committee on Commerce, U.S. Senate—
Bill S.3005 regarding Safety Standards of motor vehicles.
 - Received from Senator Warren G. Magnuson,
Chairman of the Committee on Commerce, U.S. Senate—
Committee on Commerce—Legislative Calendar, April 1, 1966.
 - Received from Senator Warren G. Magnuson,
Chairman of the Committee on Commerce, U.S. Senate—
Traffic Safety Hearings, Committee on Commerce.
 - 1966 S.A.E. (Society of Automotive Engineers) Handbook
 - The recall figures of Canadian cars for the years 1963 through
1967 by Kaiser Jeep of Canada Ltd.; Chrysler Canada Ltd.;
Ford Motor Company of Canada Ltd.; American Motors
(Canada) Ltd.; General Motors Products of Canada Ltd.;
Volvo (Canada) Ltd.; which was filed with the Clerk of the
Committee by order of the Committee November 31, 1966
when it was holding hearings in Windsor.
 - Summary Report—The State of the Art of Traffic Safety
by Arthur D. Little Inc.
 - Technical Notes prepared by the Motor Vehicle Accident
Study Group of the National Research Council
Tech. Note #1, Motor Vehicle Safety — The System
Tech. Note #2, Motor Vehicle Safety — The Driver
Tech. Note #3, Motor Vehicle Safety — The Driver, Alcohol-
ically Impaired
Tech. Note #4, Motor Vehicle Safety — The Vehicle
Tech. Note #5, Motor Vehicle Safety — The Organizations
Tech. Note #6, Motor Vehicle Safety — The Vectors
Tech. Note #7, Report of the Motor Vehicle Accident Study
Group
Tech. Note #8, Motor Vehicle Safety, Accident Control.
 - Resolution of Local 444 of the U.A.W. relating to federal
inspection during the processing and manufacturing of auto-
motive vehicles.

EXHIBITS

Nos.

36. Resolution of the Canadian Labour Congress re Automobile Compensation Board, Resolution re Traffic Safety.
37. Canadian Government Specifications Board "Guide to Traffic Safety", and "Motor Vehicle Safety Standards".
38. Documents supplied by the Canadian Government Specifications Board showing comparative auto safety legislation provincially, and in England, France, Germany, Italy and Japan.
39. Letter and documents from Dr. William Haddon, Administrator, Traffic Safety Agency, U.S. Department of Commerce, including The Initial Federal Motor Vehicle Safety Standards, dated February 1, 1967, to Mr. Timothy D. Ray, Clerk of the Committee.
40. Copies of Grievance No. 3-31108 at Chrysler Corporation of Canada Ltd.
41. Inspection defect cards O. Assy., 7474-1, Nov. 66.
42. Inspection Check List, 169128 and 166998.
43. New Vehicle Standing Procedure, dated October 12, 1965, and December 6, 1965, issued by A. A. McKenzie, Industrial Relations Manager, Ford, Oakville.
44. Report, dated November 1, 1966, signed by Mr. J. L. Coissie relating an inspection incident.
45. Brief of Local 444 U.A.W.—presented by Mr. Charles Brooks.
46. Agreement between Chrysler Canada Ltd. and U.A.W. Local 444, March 7, 1965.
47. Chrysler Assembly Inspection Travel Cards.
48. Chrysler Passenger Car Pre-Delivery Service Inspection.
49. Chrysler Organization Chart.
50. Procedure for the Safe Handling of Defective Power Assist Brake Units, dated October 1, 1965, from Ford.
51. Safety Precaution—No Brake Vehicle sign from Ford.
52. Danger—Do Not Drive sign from Ford.
53. Danger—"Toe In" sign from Ford.
54. 1967 Passenger Car Pre-Delivery Service Record from Ford.
55. 1967 New Vehicle Pre-Delivery Inspection and Adjustment Check Sheet from General Motors.
56. Inspection Record Card from General Motors.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations
and/or a translation into English of the French.

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966-67

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 30

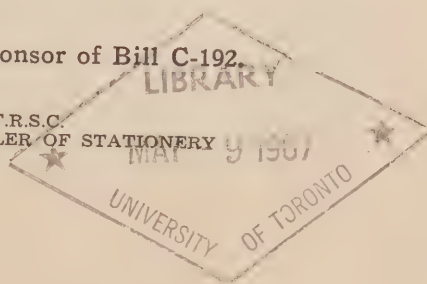
TUESDAY, MARCH 21, 1967

Respecting the subject matter of
Bill C-192, An Act to Amend the Criminal Code
(Destruction of Criminal Records)

WITNESS:

Mr. Donald R. Tolmie, M.P., sponsor of Bill C-192.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—(24).

(Quorum 10)

Timothy D. Ray
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, March 21, 1967.
(41)

The Standing Committee on Justice and Legal Affairs met this day at 11.15 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, Goyer, Guay, Honey, Mather, Tolmie, Wahn (11).

The Chairman introduced Mr. Donald Tolmie, M.P., sponsor of Bill C-192, and invited him to make an opening statement re the subject-matter consideration of this Bill.

At 11.30 a.m. the Chairman invited Mr. Forest to assume the Chair.

After his statement, Mr. Tolmie was questioned.

Agreed—That the Subcommittee on Agenda and Procedure decide what witnesses will be invited to appear during the consideration of this Bill.

The Vice-Chairman thanked Mr. Tolmie for his valuable presentation.

At 12.35 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, March 21, 1967.

The CHAIRMAN: Gentlemen, we have a quorum.

The subject matter referred to us today is Bill No. C-192, sponsored by Mr. Tolmie. I am reading from the Parliamentary Guide, Donald Ross Tolmie, B.A., Q.C., a member of Parliament for Welland; born on November 1923 at Lindsay, Ontario. He was educated at the Lindsay High School, the University of Toronto, and Osgoode Hall Law School. He was married in September of 1952, and he has three children. He served in the RCAF from 1942 to 1945, retiring with the rank of a Flying Officer. He was an Alderman of the City of Welland from 1957 to 1964; a member of the Hospital Board, the Arena Board, and the Welland Area Planning Board; a member of the Welland Curling Club; Branch 4 Royal Canadian Legion; past president of the Junior Chamber of Commerce; Fonthill Golf Club and director of the Welland Greater Chamber of Commerce. He was first elected to the House of Commons in the general election of 1965.

Gentlemen, Mr. Donald Ross Tolmie, sponsor of Bill C-192.

Mr. TOLMIE: Thank you for that overly kind introduction, Mr. Chairman.

I will be very brief. I know your time is valuable, so I will get started right away. The proposal to erase criminal records of men and women who have rehabilitated themselves and are leading exemplary lives since their convictions is not novel. It has long been advocated by groups such as the John Howard Society. However, in spheres where no powerful lobbies are promoting change, reform often comes slowly.

Recently, strong forces have renewed the request for this type of remedial legislation, and this trend is entirely consistent with the now prevailing concept of emphasis on the complete rehabilitation of the inmate, both within and without the prison walls.

Thus the purpose of this bill is basically twofold. Out of sheer justice, if we assume a man properly convicted, sentenced, and served same, then in our hackneyed but very accurate appraisal "he has paid his debt to society". Obviously then, it is illogical and completely unjust to add to his punishment which a competent court decided upon, by saddling him with a record in perpetuity, hounding and harassing him to his dying day.

In addition, of course, if our philosophy towards punishment has really changed from the punitive and deterrent emphasis to the rehabilitative objective, then on this ground alone the principle of eradication of records must be recognized.

According to our now accepted theories of Canadian penology, all inmates who can benefit from rehabilitative procedures should be entitled to them, with the hope that when the inmate emerges into society, once again he can take his place as a productive, well-adjusted citizen.

To pursue this concept of rehabilitation to its logical conclusion, then nothing should hinder this process as an ex-inmate endeavours to resume his rightful place among his fellow men. He simply cannot do this very readily if he has a record hanging over his head, which quietly but inexorably says: I am different, I am still stigmatized, I am still a second-class citizen, I am deprived of many of the rights and advantages other citizens enjoy.

The gnawing worry and potential disgrace caused by an existing record, as well as a real deprivation of free travel and job opportunities, most certainly inhibits a true and lasting rehabilitation.

Thus, on the basis of the concept that a sentence served is expiation for this crime, and on the ground the perpetual retention of a criminal record impedes rehabilitation, the principle of erasure of criminal records should be implemented into law.

For many of us the necessity for this reform legislation could be well illustrated by emphasizing the real disabilities an ex-inmate suffers by the retention of his record.

A man with a record has many job opportunities denied him, varying with the province in which he lives. He can be refused employment by the federal and provincial civil services, by any employer who might require a bond, such as, employment as a breadman, a milkman, a taxi cab driver, a deliveryman, in a bank or a finance company.

Certain positions in large industries are denied them also. In many cases they cannot join the armed services, or enter the professions or college; they are denied the free rights of travel, and admission to other countries such as, for example, the United States. In some cases a valuable employee of a company is denied a transfer to the United States because of a petty record incurred over 30 years ago.

The recent glaring example of a Nova Scotia citizen, convicted of joy-riding at the age of 17, being forced to give up his seat on municipal Council vividly focuses our attention to the urgent need for reform in this sphere.

As the proponent of this bill, my position should be made clear. Fully cognizant of the practical difficulties of enacting this type of legislation, which at one and the same time must protect society from those who would abuse it, and help those who merit consideration.

I have produced a bill knowing full well that its contents must be amended, or even another approach substituted. However, it does embody the principle of expunging records in some way, and under some circumstances, and as such, I hope will be a basis for deliberation and eventual enactment of federal legislation in this field.

The present Bill No. C-192 places the expunging of criminal records in two categories of infant and adult. For adults, the Criminal Code is amended by inserting therein, immediately after section 655, a subsection 655A (2) which in effect states that anyone convicted of an offence, who for a period of 12 years after he has served his sentence, has not been convicted of another offence, shall be deemed not to have committed the offence for which he was convicted.

Thus, if a man has no conviction for a period of 12 years after release from custody, he is presumed to have become integrated into society, and when posed with the question "have you ever been convicted"?, he can properly say "no".

The problem of juvenile offenders' incurring records, in my opinion, is even more important. There is a much higher percentage of infants than adults incurring records, and in a substantial number of cases, for relatively minor offences. This simply means that thousands of boys between the ages of 17 and 21 in their formative and sometimes indiscreet years, ran afoul of the law for offences such as joy-riding, petty theft and drinking while a minor. After reaching adulthood, the great proportion of these boys lead normal exemplary lives, but even in middle-age can be haunted by minor indiscretions of the past.

Section 655 A(2) endeavours to remedy this situation by automatically erasing the record of an infant upon attaining the age of 21, provided he has only one conviction. If he has more than one conviction prior to the age of 21, an application could be brought before the local judge, who, in the dual interests of society and the boy, would make a decision as to whether his record at that time should be expunged.

Naturally, before this Committee makes any recommendations, interested and knowledgeable witnesses will be heard. Among other ones this Committee might consider, I would suggest that the Ontario and Canadian Bar Association, the John Howard Society, the Chairman of the Parole Board, and the Canadian corrections Association, should be asked to testify. In addition, I feel it would be helpful to this Committee to ascertain the state of law in this field in foreign jurisdiction and I would be pleased to assist in this comparative assessment. Thank you, gentlemen.

The CHAIRMAN: Thank you very much, Mr. Tolmie. Mr. Forest, would you take the Chair? I have to go up to the Finance Committee to introduce the Parliamentary Counsel, and I will be right back. Thank you very much.

The VICE-CHAIRMAN: Do members have any questions to ask Mr. Tolmie? Mr. Aiken first, and then Mr. Honey.

Mr. AIKEN: Mr. Tolmie, I am going to say before I start asking questions that I agree with the principle that you are enunciating, and with your objective; but I am going to ask some questions which I think would have to be answered eventually, and you yourself probably realize what problems are involved.

The first one is what answer could a person give, let us say, to the U.S. immigration people if he were asked whether he had ever been convicted of a criminal offence, if your bill were passed?

Mr. TOLMIE: Well, Mr. Aiken, we tried to contemplate this situation, and in section 655A (1) it states that the offence be deemed not to have been committed. Now, I think that properly the applicant could say that he had never been convicted of a criminal offence, if this law is passed.

Mr. AIKEN: That is very good, but let us suppose that the American immigration authorities have a newspaper record, or transfer records from the Mounted Police, or any other records which indicate that this man has made a false statement in his application. What is going to happen beyond our jurisdiction? Can we do anything at all about the person who wants to use this law outside Canada?

Mr. TOLMIE: Frankly, Mr. Aiken, I have not given it a great deal of consideration. You mention the circumstance where one is applying to go to the United States, and through some process those authorities had access to the RCMP records—

Mr. AIKEN: Or newspaper reports.

Mr. TOLMIE: Yes. Now with regard to the RCMP records, according to this bill they would no longer exist, and therefore they would not be available to the American authorities. As far as newspaper reports are concerned, I cannot see any practical way that this can be avoided.

In other words, there are going to be exceptions, there are going to be difficulties, and this perhaps could be one of them. Frankly, at this moment, I cannot see any practical way where we can avoid the situation where newspapers, through their editorials or through their news media, have reported the fact that a man has been convicted and has a record; this may be 10 or 15 years ago.

We cannot obliterate all the newspapers; therefore, this is, perhaps, a real problem. But I do not think it is going to be that serious, and, frankly, if this does become law, American authorities or any other authorities should not take any recognition of newspaper reports as far as convictions.

Mr. AIKEN: But is it not the fundamental difficulty of your bill that you cannot really legislate that black is white, no matter how hard you try and that you cannot legislate facts out of existence?

Mr. TOLMIE: You cannot legislate facts out of existence, and this bill does not purport to do that; the man has been convicted, he has served his sentence, and that cannot be obliterated. But as far as having a record of that which pursues a man and impedes his progress in life, that particular fact, the record can be obliterated; this is all this bill is trying to do.

Mr. AIKEN: One other question relating to juveniles. You do not attempt to amend the Juvenile Delinquents Act, because that is another subject. I think that it might very well be included in the principle of your bill that the Juvenile Delinquents Act is not satisfactory along these lines. I am suggesting this: a juvenile in most parts of Canada is a person under 16, although in some places 18, and he can answer the question "have you ever been convicted of a criminal offence?" by saying "no", and honestly say so because the Juvenile Delinquents Act says that no juvenile is a criminal, but that he is a person in need of assistance. He is found guilty of delinquency, and not guilty of a crime. So he can answer "no" honestly, and his problem is not the problem that I see in your bill. Would you not think that some approach of that type would be better than trying to legislate facts out of existence? This is what is fundamentally wrong with it.

Mr. TOLMIE: Mr. Aiken, you have brought up a very good point; in the first place, as far as the Juvenile Delinquents Act is concerned, I think it requires a lot of major amendments. Children, and I think we can rightly call them that up to the age of 16, are not plagued by records. As I understand it, if they are convicted under 16 years of age, then no record is brought forth when they are being penalized.

Mr. AIKEN: I wish that that were true. I think there is some—

Mr. TOLMIE: There may be. This is my understanding. But the group I would want to protect are those from say 17 to 21 who commit minor indiscretions—and I know of some through personal experience—and who then, of course, have

a record which follows them, according to present law, until their dying day. So this is the large body which I think perhaps should receive more attention than even the adults. It is this group, as I say, from 18 to 21 that I would be primarily interested in.

Mr. AIKEN: Mr. Tolmie, there have been suggestions from time to time that a third category should be created; that is, the people under age 21 who are over the juvenile age. Would you think that if we did create a third category of this type and legislate that such persons would not be guilty of criminal offences, it might take in most of the people you are concerned about?

Mr. TOLMIE: I think it might be investigated. As I understand your reasoning, you would extend the protection to this group from say, 18 to 21, which now the group up to 16 enjoy. I think it has some inherent danger in it. It would have to be most thoroughly investigated because, as I understand the statistics, the group between the ages of 18 and 21 are the group which proportionately commit more crimes than any other comparable group in society, and as such, to give them blanket protection, we might be taking a very dangerous step. I do not think, off-hand, that this would be acceptable. I would rather see a situation where the one convicted or someone on his behalf had to apologetically, and have a judge gauge all the circumstances and determine if, in the interests of society and in his own interests he could be relieved of this burden.

Mr. AIKEN: I will pass to someone else. Mr. Tolmie, as I said in the beginning, I think that I agree with you that a person who has committed a single offence should not have it hanging over him the rest of his life. The difficulty I see is that he has. How we can legislate it out of existence is the problem.

Mr. HONEY: Mr. Chairman, I just want to comment on one point. Mr. Tolmie, I also agree with the principle of your bill. As Mr. Cameron indicated, I think we should hear some witnesses. Just on the point of subsection (2), Mr. Tolmie, you do not make any provision for a time period there before erasing the record of a person under the age of 21 who attains that age, as I read it. You then say that the record is cleared when he attains the age of 21 years. Do you think you should have a time limit there, the same as you have for an adult committing a crime?

Mr. TOLMIE: Mr. Honey, as I originally stated, I think this bill will require some very major amendments. Perhaps this section will be one of them. The original idea was that if an infant was convicted of one offence, then automatically when he attained the age of 21 it would be obliterated; that is, his record would be obliterated. The thinking behind that was that this would be an isolated case; it would not show a pattern of misbehaviour or criminal tendencies and therefore should be eliminated as quickly and quietly as possible.

Now, if an infant committed more than one offence, one would be disposed to think he is setting out on a certain pattern of misconduct of a more serious nature. Therefore, he would be under the compulsion to take positive action in applying before a judge to have his record expunged.

This was the basic thinking of this clause. However, I can see certain weaknesses in this clause. For example, an infant could commit an offence when he is 20 years of age, serve his sentence or pay his fine, whatever the case may

be, and then when he is 21 automatically his record would be eliminated. It might even be a very serious offence. So I would not be reluctant to see a time limit imposed in this clause. For example, three to five years after he attains the age of 21 he would apply. This would obviate the possible danger I just mentioned of one offence being committed just prior to attaining the age of 21 and automatically being eliminated from the record.

Mr. HONEY: The example you used is the one I had in mind, Mr. Tolmie. We do not want to go into detail now but it would seem to me we might apply, in the case of an infant, a person under 21, perhaps not a 12-year time limit, but some time limit. We should give consideration to that or alternatively make provision for an application to the court after he attains 21 years of age, along the line you have provided for if he has committed more than one offence. I think these are details but we should keep them in mind. That is all I had, Mr. Chairman.

Mr. WAHN: Mr. Chairman, like others I strongly support the principle of this bill. I think Mr. Tolmie is to be congratulated for bringing it forward. My question is really one of wording. The bill says that in these circumstances:

—persons shall be deemed not to have committed the offences—

Mr. Aiken says that seems almost an attempt to legislate facts out of existence. Would it not achieve the same purpose, Mr. Tolmie, if you said in effect that in these circumstances the conviction shall be nullified and the person shall be deemed not to have been convicted? Ordinarily I think when you are asked questions you are not asked whether you have ever committed an offence. If this were so very few of us could ever give an honest answer. What they ask is whether we have been convicted; whether we have been caught.

An hon. MEMBER: We are not under pressure, you know.

Mr. WAHN: I was referring to myself. Would you not achieve the same purpose if you merely said the conviction would be nullified and deemed not to have been made. A court of appeal, I suppose, can always nullify a conviction; certainly a sovereign legislature can nullify a conviction. It would seem not to be trying to legislate facts out of existence then but just nullifying a judicial act.

Mr. TOLMIE: I see your point, Mr. Wahn, and certainly it deserves attention. I think you are on the same vein of thought as Mr. Aiken. It says: "deemed not to have committed the offence for which he was convicted". This is a question of wording that may be very important. The main purpose of this type of description was to ensure that the person who was questioned as to whether he had ever been convicted could truthfully say no. If, for example, it just said that the records had been expunged, then he could answer the question quite frankly: Have you ever had a record? He could say: No. Or to: Do you have a record? he could say no. But he could not answer truthfully the question: Have you ever been convicted?

Mr. WAHN: That is the usual question, I think.

Mr. TOLMIE: Yes, that is the usual question. So I think this suggestion of yours has much merit and your suggestion, as I understand it, would be "be deemed not to have been convicted".

Mr. WAHN: Yes. You might also want to say that the conviction had been nullified, or whatever the wording might be. But, in effect, he is "deemed not to have been convicted".

Mr. TOLMIE: I think this is certainly a very worthy suggestion.

Mr. WAHN: It just seemed to me that as presently worded, the clause might cast some reflection upon the judicial decision under which he was convicted. Whereas, if you just nullify the conviction I would not think that would have the same effect.

The other question I had was this. I believe the Solicitor General, Mr. Pennell, referred to this question in the House of Commons and indicated that he was considering possibly issuing pardons in certain cases such as this. I gather that would not cover the points you have in mind?

Mr. TOLMIE: This, of course, is the basic cleavage of opinion between the exponents of what we call legislative erasure and judicial erasure. At the present time pardons are granted but, although they have a salutary effect on those who receive them—they get a certificate saying they are now accepted citizens—from a practical standpoint it does not really assist them very much because the record still exists.

I understand Mr. Pennell's idea is, at the same time the pardon is granted, to also erase the record. Now, this, of course, brings up another philosophical attitude toward the erasing of records. On the one hand it is done automatically after a certain period of time without investigation. On the other hand, it is done after a certain period of time upon application by those wishing to have the record expunged. It is judicially reviewed and then a decision is made.

There are advantages and disadvantages in both concepts. I do not know whether you want me to go on in this vein or not, but one disadvantage, as I see it, is that many people have committed offences when they were 18, 19 or 20, and when they arrive at the age of 50 they are long-forgotten episodes in their life. They might very truthfully apply for a position, and then answer the question: Have you ever been convicted? by saying no, while the record would reveal they had been. Then if it was a situation where they could apply for a pardon and get that record expunged, it would be too late because the employer would know of the situation. Geographically, many people are isolated and they might not be aware of this question of applying for a pardon and at the same time getting the record expunged.

Now the other argument is that if a man is serious enough about getting his record erased, then he should have enough gumption, as it were, to apply. The danger of application also is the fact that if you have to apply it means a judicial review, it means investigation, because the theory is that anyone who applies would have to be investigated to see if, during this period, he has led an exemplary life. If this is so, it conjures up visions of investigation which might reveal what this man has been trying to conceal for years. It might reveal it to his family, his friends and associates.

The other great danger, as I see, it, is the fact it is subject to ministerial discretion—and this is presuming the question of the record being erased would be decided by a minister. It might conceivably be decided by a court or some other body. But if it is decided by one minister, the decision would hinge on the philosophical attitude of that particular minister. He might be of liberal mind—and I use that word with a small "l"—and hence would grant many more than perhaps one who had a stricter concept of society. Also, one minister might have a certain loathing of a particular offence. I am thinking of a sex offence and

he might be very reluctant to erase the record of one who committed any type of sex offence. One might emphasize property offences and feel they are much worse than sexual offences. It would be at his discretion. Therefore he might, as I say, emphasize or give more leniency to a certain type of offence.

As I say, I do not want to get into the whole ramifications of the two concepts. But they are important and these are some of the difficulties I can see. When you brought up the question of pardons, Mr. Wahn, this led into the discussion of the two concepts.

Mr. WAHN: There is one point that is not covered by this bill and perhaps it cannot be. I had a case where an American applied for landed immigrant status in Canada. In the course of the immigration investigation it was found that 25 years previously he had been convicted of an offence in the United States. I think he was fined \$50 but it was quite a serious offence even though the fine was nominal. This, I think, perhaps illustrates the importance of this type of legislation. As far as I am aware this man has led an exemplary life since, but nevertheless there is some problem about his coming to Canada now because of an offence committed that long ago. This legislation would just cover Canadian convictions, of course, and would not work in reverse, as it were.

Mr. TOLMIE: No, it would not; but again this opens up a real field. To reinforce your contention, this incident happened very recently. A Scottish immigrant came over with his wife. They got in ostensibly legally, then they had a spat, or perhaps a more serious disagreement than that. She left and went back to Scotland and informed the Scottish authorities that when her husband had applied he had wrongly stated that he had no record; he had a minor record. So now he is being expelled or sent back to Scotland. These are not then completely isolated cases, and this is a sphere that this bill might encompass. I do not know how it can be done offhand.

Mr. WAHN: That is all, Mr. Chairman.

(Translation)

Mr. GOYER: Necessarily, as have all the other members have spoken up to now, I find that the principle of the bill is very good, and will enable us to bring some progressive developments of our archaic criminal and penitentiary methods. But as far as paragraph 1 is concerned, a pardon can always be obtained and up to now, the procedure was deplorable. We should liberalize that method. But do you know, if, when a person gets a pardon, for instance, cases of those mentioned by Mr. Aiken in international relations, that a person is considered as having never committed an infraction or an indictable offense?

(English)

Mr. TOLMIE: I am sorry that I cannot answer in French, but I suppose you knew that already.

If a man gets a pardon now, it is just a certificate stating that he is taking his place in society, but it does not erase his record, so he still is stigmatized by having a record. I understand Mr. Pennell is considering, when a pardon is granted, some type of erasing of the record at the same time.

(Translation)

Mr. GOYER: If this change were made, would that satisfy your requirements, or if the restrictions you stated a few minutes ago would still be maintained?

(English)

Mr. TOLMIE: Wel, Mr. Goyer, I do not want to repeat my arguments against the pardon concept or the judicial, because actually this is perhaps stating the obvious. It is very complex and the two approaches are trying to arrive at the same thing. The judicial one actually, perhaps, leaves more to the protection of society.

Perhaps that is overstating it, but just to sum up the three disadvantages of the judicial erasing process, which would be exemplified by the pardon, one would be that it puts the onus on the person to apply and there may be valid reasons why a person never applies. One, as I say, could be because of geographical situations where a man lives in the Northwest Territories and is not aware of this leniency or aware of this new change.

The other could be where a man has actually forgotten about his indiscretion and forgets to apply. The other major drawback, as I see it, would be the fact that this would presuppose an investigation. If a man has been living with his family in a small town for 12 years and living a good life, he may be very reluctant to open up the situation and have the danger present of an investigation showing that he did have a record. The other way it is quietly done, and no one knows because it is done automatically. This possibility of revelation through investigation may inhibit a lot of men from applying.

The one major drawback, if it is ministerial discretion, would be that this would depend upon the particular philosophical attitude and social concepts of the minister presently occupying that position. There would be no definite philosophy. It would vary according to the occupant of the post.

(Translation)

Mr. GOYER: The question may seem odd, but the way it is written makes me put the question to you, why twelve years?

(English)

Mr. TOLMIE: I do not understand the question.

Mr. GOYER: Why 12 years and not 15?

Mr. TOLMIE: Well, frankly, what I did, Mr. Goyer, was to take 12 years because I thought 12 years was too long, and I can always reduce it to 10. In other words, perhaps this is not a very forthright way of doing it. But it is a matter of opinion as to whether 12, 10 or 8 years is right. I really do not know. I had to put one figure in, and I think 12 errs on the side of being very conservative—I can use the word with a small “c”—whereas maybe 5 years would be too daring and would not be accepted and the whole principle might be rejected because people in assessing the bill might feel that one who would put 5 years in does not show much good judgment, and therefore his whole bill does not show much good judgment. I was trying to put in a figure which at least would be a talking point, but not necessarily a definite accepted figure.

(Translation)

Mr. GOYER: Mr. Honey was suggesting a few minutes ago that for minors, we should add this restriction to the effect that there would be a period of two, three or five years after reaching 21 years enabling them to benefit from the advantages of the Bill you are presenting, and you seem to accept that sugges-

tion? Then I would like to ask you—do you see a difference in the principle between a minor offender and the adult offender?

(English)

Mr. TOLMIE: That is a good question. As a matter of fact, I anticipated that before I came, or at least I hope I did.

I think the reason why 3 to 5 years would be acceptable for the infant, would be based on the fact that it would be judicially reviewed. In other words, I feel that an infant should not have to wait 12 years to have his record erased.

During this period of time, from 21 to 25 years of age, he is seeking employment and he should be relieved of this as soon as possible. These are his formative years, and this is a time when he is launching himself into society. Also, these are his formative years as far as his attitude toward society is concerned.

So the quicker we take from his neck this burden, the better it will be as far as rehabilitating him and making him feel that society is not out to harass and stigmatize him.

My main idea was to be able to have an infant have his record erased in a shorter period of time than an adult, but at the same time have society protected by having a competent judge review all the circumstances. In this way, I felt we might have the best sides of protecting society and also protecting the infant.

(Translation)

Mr. GOYER: I will answer that question by saying that we will accept a period of 12 years for the adult, and let us say three years for the minor. Do you see fundamentally a difference between the principle in the acceptance of your theory for the minor or the case of the adult?

(English)

Mr. TOLMIE: Basically, the type of offence or the crime the infant becomes involved in is of a lesser nature and not as severe as perhaps that of the adult. Therefore, from that principle alone, he should not have to wait that long.

Also, as I stated, by virtue of the fact that there is a judicial review, although the period is shorter, any danger, or a great deal of danger is averted because his conduct is being reviewed.

But I think again the main thing is that the infant, if he is going to rehabilitate himself, even if he has had two or three offences up to age 21, should have this record eliminated. Because there are a lot of young men from 21 to 25 who know they have a record and it does impede them. Now, if they had to wait until they were 31 to get rid of this record, then—I am repeating myself to a certain extent—what really is happening at this period of his life when he is trying to adjust to society, when he is trying to get employment, when he perhaps is trying to go to the States or join the army or go to college, then he is completely thwarted. He cannot do it. This is the reason that the philosophy is, I feel, the same; but particular emphasis has to be placed on the large category of interests, who actually do incur offences and this is a much higher percentage than the adults.

(Translation)

Mr. GOYER: Do you have percentages on, let us say, the repetition of indictable offence or of any offence after a certain number of years for persons, adult or minors? Do you have any statistics to present to us to the effect that we can say, in 90 per cent of the cases for a person who has such a record when there is a period of ten years, we can see what category of persons do not commit an indictable offence, or any other offence. Do you have any statistics to that effect? These questions seem to be a little ticklish because the principle of your Bill is in line with my thinking as far as I am concerned and I am trying to find additional arguments that could favour the passage of that Bill?

(English)

Mr. TOLMIE: That is very kind of Mr. Goyer. I will try to assist you.

I have not, but I would be very pleased to get them. I think I know what you are driving at. In other words, if certain offences could be revealed as showing a tendency to be repeated, then after 12 years it is conceivable that for this type of offence the offender should have his record reviewed before it is automatically granted. And if there was a type of offence which showed a history of not being repeated, then the automatic erasure could be implemented.

This opens up a new phase. Some people feel that automatic elimination after a certain period of time is all right in principle, but there should be certain exceptions. And evidence as you suggest as to the type of offences which show predisposition to be repeated might be ones which would form that exception and should not be the object of a general elimination. This type of evidence I think would be very important.

The VICE-CHAIRMAN: Mr. Gilbert, you are next.

Mr. GILBERT: Thank you, Mr. Chairman. My first question, much like Mr. Goyer's, has to do with the twelve year period in subsection (1), and is a follow-up to Mr. Honey's suggestion that it only be a three year period for juveniles.

If I remember correctly, Mr. Tolmie, a select committee of the Ontario legislature made a study on the same subject, and they indicated a five year period rather than a twelve year period. You get into the awkward position where, if you have a young fellow 22 years of age committing an indictable offence, and subsection (1) applied he would have to be 34 before it would be expunged. A young fellow, 20 years of age, could apply at the age of 23, three years after, if you took up Mr. Honey's suggestion. So you get a very wide spread, which is almost an unfair treatment of offenders. Have you any comments on that?

Mr. TOLMIE: Yes, I have. As I stated, certainly that figure of twelve is arbitrary and could be negotiated very readily, as far as I am concerned, because I have no reason to believe that that is the final word, as far as that particular figure is concerned, and I would be very pleased to see it reduced. You mentioned the situation where a man, if he is convicted when he is 22, could not have his record erased until he was 34. That would be quite true but it would be an automatic erasure; whereas the chap who was convicted of an offence when he was 20, would have to apply and have his case judicially reviewed, and the judge would decide. So, on the surface, it is not that unfair. However, the

unfairness, if it does exist, could be lessened by reducing the number of years to, say, ten or eight.

Mr. GILBERT: Mr. Chairman, Mr. Tolmie makes no distinction between crimes of violence and crimes of non-violence. He touches lightly on subsection (3) with regard to an exception concerning indictable offences punishable by death or imprisonment for life. With regard to such crimes of violence as murder, rape and robbery, these definitely would be excluded under your subsection (3), if I remember correctly the punishment under the code. But you have crimes of violence, say like indecent assault or aggravated assault; and then you have the non-violence, like breaking and entering and theft or, say, joy riding. Is there a distinction in your mind between crimes of violence and crimes of non-violence with regard to the application of your bill?

Mr. TOLMIE: No, there is not, Mr. Gilbert. Subsection (3) was designed to make certain, for example, that a conviction for murder or for treason would not be protected under this bill. Now, perhaps it should be re-defined so that subsection (3) only applies to those particular crimes. It was not meant to deprive a person, who was convicted of any type of violent crime or rape, from the provisions of this bill. There might be an ambiguity there in the sense that it says,

This section shall not apply in the case of an indictable offence punishable by death or imprisonment for life.

So I think that subsection could be reviewed and refined.

Mr. GILBERT: Mr. Tolmie, your bill automatically expunges the record, not on the initiative of the accused but possibly on the initiative of the Minister of Justice. With regard to juveniles, you usually find from experience that young fellows who are convicted between the ages of 16 and 21 are usually given a probation period. Therefore, the probation officer has some idea of the fellow's conduct during the probation period; some idea with regard to whether he is employed or unemployed; whether he is reformed and rehabilitated, and it seems to me that probation officers play rather an important part in making this decision. You are asking for an automatic removal without any knowledge of what the offender has done in the interim.

Now you might say that this falls into the category of pardons. However, it seems to me that if a young fellow wants to have his record expunged, he must take the initiative. The problem arises when he applies for a position and he is asked the usual question: "Have you ever been convicted of a criminal offence?"; also, when he is stopped at the border and is asked by the border officer, or if he has to apply for a bond. These are the three situations when this problem arises. This is why I was going to touch on Mr. Wahn's point. He was talking about having it nullified. Bonding companies can get around that very easily by instead of saying: "Have you ever been convicted?", asking: "Have you ever been charged with a criminal offence?" These really are the main places where the person is confronted with the trouble, and this is why you have to expunge it. You have to get rid of the facts; otherwise, you do not achieve the result. Bonding companies can get around it very easily by changing the wording of the question. This is what we have to direct our minds to, Mr. Tolmie.

Mr. TOLMIE: Mr. Gilbert, in the first place, I do not know the exact statistics but I would hazard a guess that at least 75 per cent of all offences are incurred

by infants. Now, your point, as I see it, is that before an infant has his record erased there should be some type of review, that we should ascertain whether he is living a stable, well adjusted life, and you allude to these situations of a probation officer who does this investigation. I think judicial review by, I would assume, a county court judge in the case of an infant, would take care of the situation. With the facts adduced, the judge could determine, in the interest of the infant or society, whether his record should be eliminated. If he is found to be, though not convicted of any further offences, an unsavoury character, one disposed to associate with known delinquents, then I would imagine the judge would deny his application at that particular time. This takes care, as I say, of the question of infants, so we do have protection there and protection over the greater number of offences.

Now, as far as adults are concerned, I fully realize that this question of an automatic legislative erasing of the record is the most drastic one. But not to reiterate by arguments again, the question has always been brought up: If this is so important to the man we are trying to protect, why does he not apply himself? I have mentioned two or three reasons he does not: perhaps it is geographical; perhaps the situation where he lives; the fact that he does not want the whole question revived and investigated; he may have even forgotten about an indiscretion; and also, of major importance, the fact that it would depend upon this review, again involving ministerial discretion, which has inherent dangers. This does not mean that this particular method should not be adopted; I assume that this is why we are here deliberating. I pose these arguments against this particular type of erasing of records for these three reasons, and there may be more, and frankly, I would like very much to hear people who are much more knowledgeable in this field than I am, give evidence pro and con. There is a very good treatise out on comparative jurisdictions and I think this should be made available to the Committee because it sets out what other countries do in this regard. The basic cleavage of opinion again is whether it should be automatic through a period of years or whether it should be judicially by review, and both have merits.

Regarding bonding companies, I quite agree that there is no way, legislatively, at the present time that we can force bonding companies to retain their question: "Have you ever had a conviction?", and not use the question: "Have you ever been charged?" but they also are under certain legislative restrictions, which also could be investigated. The real education has to be done by groups such as ours who make the problem alive and make it a problem which, more or less, energizes our social conscience, and if this is done and bonding companies feel that a Committee such as ours—Think it is important to have something done in this field, then their whole concept may change itself. There is no way we can legislate what I consider morality, or perhaps to use a more proper word, attitude toward those who pay the penalty. At least this is a step in the right direction.

Mr. GILBERT: I have one more short question. Am I correct in saying that your act is based on giving a person who has had one offense charged against him, a break? You see, you might get a young fellow 22 years of age who is convicted of joy riding, and then at the age of 24 he is convicted of theft. They are not overly serious in the full sense and yet we are depriving him of having

his record expunged, because he has two convictions. Now there are a variety of examples.

Mr. TOLMIE: Yes, a minor offence when he is young and a major offence when he is over 21 and so forth.

Mr. GILBERT: It seems to me that we must give thought to this type of problem.

Mr. TOLMIE: Yes, I agree. I think that this, as Mr. Honey pointed out, is a weakness in the bill, and that it should be changed; it could be changed by just eliminating even the suggestion of one offence and making it a situation where, regardless of the number of offences, after a period of say, three years, an infant could apply. This puts the onus on him to circumvent your argument that it should not be automatic, that the one who wants it should apply, but it is still a lesser period than, say, for the adult?

Mr. GILBERT: Thank you Mr. Tolmie.

The CHAIRMAN: Mr. Mather?

Mr. MATHER: Mr. Chairman, my sympathy for the aims of Mr. Tolmie's bill is only equalled by my doubts as to its feasibility. I agree with Mr. Aiken, I think that it is quite possible to physically erase a record of an offence but, equally, I think it is futile for us to imagine that we can ever erase the fact that an offence was committed.

It seems to me, Mr. Chairman, that the goodness of the bill, what it really aims at, is to erase or extinguish the discrimination which arises out of the abuse of the facts of the case. With this in mind, I think that we might be on wiser ground if we would consider legislation making it an offence, as we have in other categories, say, to discriminate against a person on the grounds of political belief, religion, sex, colour and so on, and that we would do better to try to legislate against any discrimination, particularly in employment, of a person who, as Mr. Tolmie's bill suggests, has committed an offence, paid the penalty and has had a subsequent good record, which has superseded the previous record. I, for one, would certainly support that type of legislation. I just wondered if Mr. Tolmie would comment on that point of view?

Mr. TOLMIE: Well, it is certainly a novel approach, Mr. Mather, in fact, I had never actually considered it. As I gathered from your statement, you would much rather see legislation which would, for example, force an employer to not consider a criminal record. Perhaps that is putting it too strongly. In other words, if the man has proper qualifications and the job is available, then the employer should not be able to deny him that employment because of an existing criminal record.

I would be afraid that this might be a pretty drastic intrusion upon a man's right to employ people as he saw fit, and again you are getting into the realm of trying to legislate on our accepted interpretation of morality. I do not think it would accomplish the purpose of this bill, although it might be a step in the right direction.

There are many other fields where a record is a real hindrance, as I mentioned before, getting into the armed services, travel and so forth. Perhaps I have not stressed this enough; it is not only a practical disability but a psychological burden that a man carries around. The whole purpose of this bill in

fact is, if a man has definitely rehabilitated himself, and I assume he has after twelve years, the presumption is then that he has already paid his debt to society; he has served his time; he has paid his fine and, therefore, there should not be a continual, perpetual punishment which is visited upon him by the retention of a permanent record.

Mr. MATHER: On the basis of your bill, with the number of years set out since the man has rehabilitated himself, and his good record having overcome his previous record, if I could put it that way, it would seem to me that my suggestion is just as practical as that in the bill in regard to employment circumstances, that there would be no more hardship on an employer to employ a person who has paid his penalty and has been a good citizen for 12 years than it would be to ask the employer to disregard the fact that the man had been convicted in the first case.

Mr. TOLMIE: You might achieve the same result but I think it would be difficult to impose your will upon the employer. People have a tendency to resent government intervention and they would say, I would think, "This is my discretionary right because, after all, I have to abide by his actions and I am responsible for other employees if I accept this man," and to foist an employee upon him and say, "Regardless of the fact that he has a record, you must take him." is a different matter than saying that to all intents and purposes he has not a record. He still has a free choice. There is a fine distinction and I would welcome seeing your idea developed and if you have any further thought on the subject or statements which would be helpful in augmenting or even cancelling this type of bill, I would be quite agreeable to hear them because this is the main purpose of this hearing. I do not think that what you have broached so far would be acceptable, but if it developed there might be some merit in it.

Mr. MATHER: It would seem to me though that an employer might equally resent a government bringing in a law which confronted him with a situation where he was told that no offence had been committed when, in fact, an offence had been committed.

Mr. TOLMIE: Yes, that is quite true; he might. But this is the change and this principle would have to be accepted by this committee and by our House, and if it is, then whether they resent it or not, it would be the law. A lot of people resent laws, our income tax laws for instance, and so forth, but if the majority feel that it is in the interests of society and the people, then I think it should be implemented.

Mr. MATHER: That is all, Mr. Chairman.

(Translation)

Mr. CANTIN: Your bill, Mr. Tolmie, up to a certain point, is related to the problem of rehabilitation. As you know, the Government created a Canadian Committee on Corrections that is studying that question of readaptation and rehabilitation. Is it possible to have the testimony of those witnesses that have been visiting different countries, that have already studied the problem of readaptation, in order to know what they think on the principle of your bill as well as details: the period of time, the age, and all the other details. Do you believe that it would be useful to add to the list of witnesses that you suggest, that we should add the names of a few members of that committee, as the Chairman, Mr. Justice Ouimet?

(English)

Mr. TOLMIE: Yes, I certainly do. I mentioned the Canadian Corrections Association, I believe. There is another committee which I believe should be heard and that is the one you mentioned under the chairmanship of Mr. Justice Ouimet. That certainly would be most acceptable, and if they have knowledge of comparable jurisdictions then I think they should be heard.

The VICE-CHAIRMAN: Are there any further questions?

Mr. AIKEN: Mr. Chairman, now that we have had a chance to kick this around a bit, I have a suggestion to make and I want to ask Mr. Tolmie if he would consider it as part of his bill, if it is in the spirit of it. It will just take a minute to set forth my idea but I think it would be acceptable.

The law sets up certain legal presumptions. Under the present law we have presumption of intent in certain cases. In certain cases, wilfulness is an element of the criminal act. In certain cases the law makes a presumption on the possession of stolen goods—there is a presumption there—and there are presumptions of innocence in every case. What is wrong with a presumption that if a person has not been convicted of a second offence after a number of years, let us say, your 12 years, that he did not have a criminal intent in the first instance and that he was not a criminal type of person. These words are used in the law in many cases. If this were the fact, why could not your bill be amended to read that an appeal from the conviction should be deemed to have been granted and the conviction reversed, and all records adjusted accordingly?

I think that this would answer most of the objections that have been raised, technical and otherwise. I see no objection to it on the ground of giving a false answer to a statement. I do not think it would be any drastic change in the law. We allow appeals on certain cases under certain presumptions.

My proposal would be that if a person was convicted of an offence, if he did not commit another offence, that the law could very easily presume illegal presumption, that he was not guilty of criminal intent in the first case, that an appeal from his conviction could be deemed to have been granted and the conviction reversed, and the records adjusted. To my mind, this would be fair to the public and it would be fair to the person involved. I think you would have to have a provision that no second application of the section would be made until 12 years after the first application. But it would not be in accordance with something just out of the air; it would not be a case of eliminating records; it would be a legal presumption and given effect by legislation. I do not think it would be very far away from what most of the members seem to have in mind, and it seems to me it would be acceptable. I support your bill under such a situation. I really think it would be an acceptable means. I think it is better than the profession of a pardon because it is always there. A man was convicted; he was found guilty of an offence and he was pardoned. In your case, he was convicted of an offence and we just say, legally, that he was not. I think that we could do it on the basis of a presumed appeal and reverse the conviction. Have you any thoughts on such an approach?

Mr. TOLMIE: Again, this is a novel approach and merits attention. I find it difficult to accept the principle that if a man has not had an offence in 12 years that the presumption should be that he had no intention or criminal intention for the first offence. This may be a device; I think in fact, that it would be hard to

argue the rightness of it, because I would feel that there are many, many situations where a man did have an intent in the first place but then changed and rehabilitated himself, so it would be wrong perhaps to state that he never originally had the intent. This is a device, as I realize.

To answer your second part, I would like to know what type of appeal; to whom you would appeal, and whether it would have to be instigated by the applicant or an interested party. This would have to be worked out.

Mr. AIKEN: No. My proposal would be just as simple as yours in the bill, that the appeal from his conviction should have been deemed to have been granted after the period of time had passed without any further legal process, and the record expunged.

A fairly simple example, is that the registry laws of all provinces permit, after a certain period of time, that discharged mortgages be ruled off the books and they are no longer included in the record. Mechanics' liens that are paid off after two years and discharged are ruled off. It is automatic, if there has been nothing subsequent. This is not the same type of thing but, to my mind, the application would be the same. The record with the Mounted Police, or whoever kept the central records, would merely expunge them if they had nothing further after 12 years.

Mr. TOLMIE: This, of course, from what you say now, would be almost identical with this bill, would it not?

Mr. AIKEN: Very much so, except that it would get around the fundamental difficulty with a logical explanation. I do not think it is illogical to say—in fact, this is what you are trying to prove in your bill; the very thing you are trying to prove is that a person who has not committed a second offence is not really a criminal type of person, so we should eliminate his record. I am carrying that into effect by saying that we will presume, legally, that he is not a criminal type of person, that he was not in the first place and, therefore, an appeal shall be deemed to have been granted on that ground—on the legal presumption that he is not a criminal type of person, that he did not have a criminal intent in the first instance, and that it was improperly assumed that he did.

Mr. TOLMIE: I most certainly would be quite ready to discuss or entertain such a suggestion but I myself do not feel I am qualified to make any real decision; it is again a matter of discussion and thought. I think perhaps the other Committee members would like to toy with this idea and examine it. Right off hand, it is very difficult to accept without a lot of thought. But also, I would like you to pose this question to various witnesses who might come before you. They would be in a much better position than I am to make a rational decision.

Mr. AIKEN: This is rather why I raised it now. Going back to another Committee that Mr. Wahn and I are both on, at the first hearing we jointly put forward an idea concerning the breakdown of marriage, which has subsequently been adopted. It was not our idea in the first place but we put it forward, and most of the briefs now are founded on this. In other words, it is a point of discussion for or against it, and this is the reason I raise it now. I think it is a logical application of what you are trying to do.

Mr. TOLMIE: I would be pleased if you would expand it at another committee meeting before people who, as I say, are much better versed than I am.

The VICE-CHAIRMAN: Are you finished, Mr. Aiken?

Mr. AIKEN: Yes, Mr. Chairman.

Mr. WAHN: Mr. Chairman, in the case of adults, this bill applies only where the adult has committed a single offence. Would it be too radical to suggest that there should be some period of time after which the same principle should apply, even though there have been multiple offences committed?

Mr. TOLMIE: Mr. Wahn, this is supposed to apply to an adult who has committed even a dozen offences as long as he has a 12 year period. It may not be that clear but it does apply to any adult.

Mr. WAHN: Thank you.

Mr. GILBERT: Mr. Chairman, if I might speak to Mr. Aiken's suggestion for a moment, I am really surprised that he would set forth this presumptuous idea. Certainly there are presumptions in the law but these presumptions are rebuttable, and that is all they are. Any man that is convicted of an offence has been shown to have *mens rea*, the intent to commit the offence, and that is the whole basis of the law. And here, after a period of time, we are going to distort the truth; we are going to say that you did not have the *mens rea* and, therefore, you cannot be presumed to have committed the offence. Presumptions are always rebuttable and they never form part of the law. It is the *mens rea*, and why should we place a person in a position who has committed an offence and say, "Well, sir, you have not in fact committed the offence, because there was a presumption." No man is convicted unless he has *mens rea*, the intent. All that Mr. Aiken is doing is sort of distorting that. What we are attempting to do here, and I am in full agreement with Mr. Tolmie's bill, is to give a person a full forgiveness, a full pardon. What we have said is that once he has served his time, the punishment should end, that he should not have imposed upon him restrictions concerning travel, bonding and employment. We have to direct our minds to these three specific fields and find a way whereby a person is not restricted in these fields. I do not think that for one minute we should attempt to distort the truth by saying that we will presume that you did not have *mens rea* in the first offence.

The VICE-CHAIRMAN: I think the discussion is getting away from the principle of the bill again. Are there any further questions?

Mr. Tolmie has mentioned the possibility of calling other witnesses. Do you want to leave this with the Steering Committee?

Some hon. MEMBERS: Agreed.

The VICE-CHAIRMAN: I want to thank Mr. Tolmie for his very well prepared presentation of this interesting bill. The competent way in which he answered questions showed that he was very well briefed and knew his subject quite well. Thank you, Mr. Tolmie.

The meeting is adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS
First Session—Twenty-seventh Parliament
1966-67

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 31

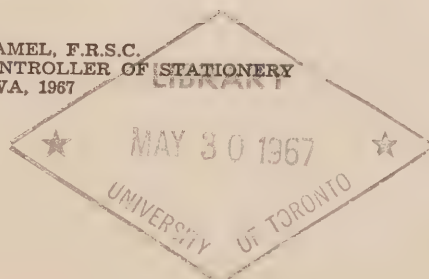
TUESDAY, APRIL 11, 1967

Respecting the subject-matter of
Bill C-192, An Act to Amend the Criminal Code
(Destruction of Criminal Records)

WITNESSES:

Mr. Georges-C. Lachance, M.P.; and *From the John Howard Society of Ontario*; Mr. A. M. Kirkpatrick, Executive Director.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967



STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,
Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Fulton,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mather,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—(24).

(Quorum 10)

Timothy D. Ray,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, April 11, 1967.

(42)

The Standing Committee on Justice and Legal Affairs met this day at 11.15 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Choquette, Forest, Gilbert, Goyer, Honey, MacEwan, Mather, Ryan, Tolmie, Wahn (12).

In attendance: Mr. Georges-C. Lachance, M.P.; and *From the John Howard Society of Ontario:* Mr. A. M. Kirkpatrick, Executive Director.

On motion of Mr. Wahn, seconded by Mr. MacEwan,

Resolved,—That reasonable living and travelling expenses be paid to Mr. A. M. Kirkpatrick who will appear before the Committee, Tuesday, April 11, 1967.

The Chairman introduced Mr. Lachance, and invited him to read his brief regarding Bill C-192.

Following his presentation and questioning, he was thanked by the Chairman for his excellent brief.

The Chairman then introduced Mr. A. M. Kirkpatrick to make a statement. During the course of his presentation and the questioning that followed, he quoted from several anonymous letters he had received and also the *Report of the Ontario Select Committee on Youth*.

At the conclusion of the questioning, the Chairman thanked Mr. Kirkpatrick for his valuable contribution to the proceedings.

At 1.25 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, April 11, 1967.

The CHAIRMAN: We have several witnesses this morning. The first will be Mr. Lachance, a member of the House of Commons, who is very much interested in this particular subject. We also have with us today Mr. A. M. Kirkpatrick, the Executive Director of the John Howard Society, Mr. Kirkpatrick is accompanied by Mr. Ramsey.

I am now going to present to you Mr. Lachance. He, of course, needs no introduction to the members of this Committee. Mr. Lachance, would you please proceed?

I notice that the Clerk has handed me something but I think I will leave it until after Mr. Lachance has finished.

Mr. GEORGES-C. LACHANCE, M.P.: Mr. Chairman, this document that I will read is the product of my personal initiative, with the collaboration of the House of Commons library. It deals strictly with criminal records.

I have French copies of this document, but unfortunately there is only one English copy. I will read the document from this translation which Mr. Tolmie had prepared. I do not know who did the English translation nor have I read it, but I think it will be better for me to read it in English.

JUDICIAL MEASURES ADOPTED BY VARIOUS COUNTRIES WITH A VIEW TO ENSURING THE REHABILITATION OF DELINQUENTS

Introduction

In criminal matters, the policy of the State expresses the manner in which the latter intends to organize the fight against crime. This policy has varied under the influence of various philosophical, ideological and political factors. The goals have progressively changed. Today it is no longer solely a matter of defending society by punishing the guilty but also of finding crime prevention methods by trying to devise measures adequate for each individual. The social character of crime policy has been progressively replaced by an individualistic character. Crime is then assessed while keeping in mind the personality of the guilty party, his past, and his physiological state. Punishment has lost some of its expiatory nature; it is no longer achieved by merely applying a technique which tends to inflict as much suffering upon the guilty person as has been caused by him. The objective notion of crime has vanished to make room for a subjective conception which considers crime as a human fact with all the consequences that this implies.

In the document I have references—I will not give the references but if you have a copy of this brief—

The CHAIRMAN: You are going to have an English translation for the members—

Mr. LACHANCE: Yes. The references are noted on the brief.

This humanization of crime policy has expressed itself in numerous fields. During the past fifty years there have been many important reform movements whose effects have revealed themselves especially in penal administration and in the social field.

Some of the measures adopted tend to promote the rehabilitation of the repenting convict. In Canada, there are various institutions designed to help the released convict resume a normal life both at the family level and at the social level. Certain organizations, generally set up by the provinces, seek to help the convict upon his release from prison and especially to find work for him.

But this undertaking which consists in facilitating the rehabilitation of the condemned person worthy of interest, cannot possibly be efficient without a parallel penal reform.

The truth of this is borne out by the fact that criminal law has undergone the same transformations as crime policy. It has been progressively modified in various countries of the world by means of measures of a remedial or re-educational nature such as parole, reprieve, pardon, probation and an entire system of educational assistance transforming the execution of sentences.

Yet all these provisions which tend to soften the methods whereby the sentence is carried out by keeping in mind the condemned person's personality, do not eliminate the material stigma left by the conviction.

This conviction is an obstacle preventing the convict from rehabilitating himself entirely. Let us simply recall the fact that certain enterprises demand as a prerequisite for employment, the absence of any criminal conviction and that many employers show reluctance to hire former convicts.

It is thus particularly interesting to note with reference to the proposed amendment of the Canadian Criminal Law, how other countries have found a solution to this problem.

We shall thus look into foreign laws, and especially into European laws, to find the legal means at the disposal of the convict in order to eliminate the effects of a previous conviction. Our study will thus limit itself to the legal aspect of rehabilitation.

Differences which are sometimes fundamental between principles in force, the procedures, and especially between the Canadian judicial organization and that of other countries, prevent any outright adoption in Canada, of solutions adopted elsewhere. This is why we shall limit ourselves to draw out the essential rules and to study the methods of application without entering into certain technical details proper to each country.

We will study in succession:

- (i) The object of rehabilitation
- (ii) Legal rehabilitation
- (iii) Judicial rehabilitation
- (iv) The effects of rehabilitation.

We should then be able to draw useful conclusions permitting us to make certain suggestions.

I. The Object of rehabilitation

The object of rehabilitation whose origin goes back to Roman law, is to restore the legal status of the individual, in as far as possible, the social status he has lost due to the effect of a just conviction.

It is assumed that there has been a prior conviction which was warranted and consequently justly inflicted.

This rehabilitation must not be mistaken for that resulting from the rehearing of a trial in the course of which the accused has been sentenced by mistake. In the latter case there is no guilty party; it is merely a matter of rendering justice to an individual who has been unjustly convicted. It is thus not a case of true judicial rehabilitation of the repentant convict who had deserved his conviction.

In order to benefit from rehabilitation the ex-convict must have given proof of good conduct since his release from prison thus showing his intention of remaining on the straight path. Rehabilitation is in fact, a measure based upon leniency whose aim is to insure the reclassification of the convict. But it does not bring up the past again, and limits itself to the elimination for the future of certain judicial consequences of the conviction.

These are the notions which keep on recurring in the legal systems, which make use of this provision for clemency. (The Belgian, Spanish, French, Hungarian, Icelandic, Italian, Polish, Russian, and Turkish legislations).

Rehabilitation, which is a good will measure towards the convict who has changed his ways has not been viewed in the same manner by all legislators.

It has been considered by some, given certain circumstances, as a right, while others still consider it as a favour.

We shall first study legal rehabilitation; then we shall examine judicial rehabilitation.

II. Legal Rehabilitation

Legal rehabilitation is automatically obtained due to the sole fact that the convict has not incurred a new conviction over a given period.

The Bulgarian, French and Hungarian codes contain provisions setting out the cases wherein the rehabilitation is awarded by right, without having to request it. In all these hypotheses rehabilitation is a right of which the convict can avail himself without undertaking any kind of proceeding. The ex-convict who fulfils the conditions set by the code automatically obtains it.

(a) Conditions for legal rehabilitation

"Legal" rehabilitation is subjected to requirements which express the interest shown by the legislator towards various convicts. In some particular circumstances, it is estimated that the conviction could be considered as being accidental, and that this hypothesis being the case the repentant convict must be given a chance to forget his past in the most radical manner and this without being required to undertake proceedings.

1. Who can benefit from legal rehabilitation?

The legislator has shown particular benevolence towards two categories of offenders; certain minors and individuals considered as being recuperable

whether they were given a light sentence, or whether an extensive period of time has elapsed since the sentence was read.

Further on, we will see what conditions are attached to the nature of the sentence and to the time elapsed between the date of the sentence and the legal rehabilitation.

In both the Bulgarian and the Hungarian codes provisions are made for the rehabilitation of minors. While the Bulgarian criminal code extends the benefit of these provisions to all minors so long as they have not committed other crimes within the past two years, the Hungarian criminal code only extends it to the minor whose conviction led to a sentence with forfeiture of freedom not extending beyond two years.

2. Which convictions are subject to legal rehabilitation?

The Bulgarian and Hungarian codes allow legal rehabilitation for those persons who have received suspended sentences and whose behaviour has been such that the court has not had to order the carrying out of the suspended sentence. In effect, these convicts are particularly worthy of interest; in these cases it could be said that the suspended sentence had an edifying effect on the offender; it is then normal to make rehabilitation easily accessible to him.

There are some notes here—references—but I think we should carry on.

Legal rehabilitation is granted for sentences with forfeiture of freedom. The French code though, also allows the rehabilitation for sentences bearing a fine.

The Bulgarian code provides that in order to be subject to legal rehabilitation the sentence must be of a short duration; it only gives the benefit of this rehabilitation to convicts whose present sentence does not exceed three years.

The French Code makes a distinction: it must be a first conviction, or in the case of several convictions, the sum of the convictions must not exceed two years of prison.

3. Conditions respecting time

We have already noted that the Bulgarian code shows benevolence towards minors only if these have not committed other crimes within the past two years.

We have also noted that rehabilitation is granted for a suspended sentence only if the conviction has not intervened during the time lapse provided for.

The Bulgarian code which allows legal rehabilitation only for sentences with forfeiture of freedom which do not exceed three years also requires that no new sentence has intervened during the three years following the expiration of the imposed penalty.

The French code makes several distinctions. Within a given period of time, varying from 5 to 20 years, according to the seriousness of the conviction, and also according to whether it be a single conviction or multiple convictions, the convict must not have been sentenced afresh to imprisonment or to a more serious conviction.

In all cases the required time starts running the moment the conviction is ended

(b) The effects of legal rehabilitation

Legal rehabilitation is obtained as of right by the person who fulfils the afore-mentioned conditions.

Its effects are similar to those brought about by judicial rehabilitation. We will study them later.

(c) *Critical observations*

Legal rehabilitation is only of benefit as we have seen to certain convicts, to those to whom the legislator has deemed advisable to grant a particular reward for their good behaviour.

That rehabilitation has the advantage as we stressed before, of being automatically obtained by virtue of the law.

However, in France, it has been subjected to some criticism; it is believed that this sometimes benefits those people who do not deserve it.

In fact the French system applies to individuals who have accumulated several minor convictions the total of which does not exceed two years and who can thus still avail themselves of legal rehabilitation. It must be admitted though that these habitual offenders should not be given the benefit of a measure based upon leniency.

On the other hand, legal rehabilitation gives among other things an incontestable advantage to the convict because it is obtained discreetly. This is not the case in judicial rehabilitation which requires an inquiry in order to establish proof of the convict's good behaviour. The investigation is not always carried out with the required discretion.

III *The Judicial Rehabilitation*

While legal rehabilitation which is allowed by few countries assumes a particular character, judicial rehabilitation has a much wider field of application.

As opposed to legal rehabilitation, judicial rehabilitation is not a right; it is a favour. In fact, as will be seen later, the authority who deals with the request for judicial rehabilitation has at its disposal wide powers of review; rehabilitation is only granted to those whose behaviour deserves a reward.

This measure is subjected to fundamental conditions and to rules of procedure.

(a) *Fundamental conditions.*

1. *Convictions open to rehabilitation*

Most codes refer to a criminal conviction without giving further details. In those cases it can be deduced that all criminal convictions may give rise to rehabilitation.

Certain legislations though expressly provide that rehabilitation is only possible for convictions based on a jail sentence, whereas all legislations stipulate that rehabilitation can also apply to convictions bearing a fine. The Swiss code also admits rehabilitation for a conviction with loss of civic rights. The Hungarian text excludes the possibility of rehabilitation for anyone having received the death sentence, or having received a jail sentence exceeding ten years, and also for any person having committed a crime against the State.

2. *Conditions with reference to the carrying out of the sentence*

All legislations are unanimous in stating as a condition for rehabilitation that a sentence must in principle be carried out. In certain countries this requirement is not open to compromise.

Naturally in other countries the enforcement takes place by all the legal means in operation in the particular country concerned. Thus, the Spanish code mentions "the extinction of the sentence" whereas the Italian code demands that the major penalty be "served or eliminated in any other manner".

In France, judicial rehabilitation can be requested not only by the person who has carried out the sentence, but also by the person who has been pardoned and by the person who has had his sentence invalidated by prescription.

3. Discharge of Financial Liabilities

Most texts on rehabilitation make provision for the financial liability resulting from the criminal conviction. The payment of damages and of the court fees owing to the victim of the damage, if there is one, is frequently laid down as a condition for rehabilitation. But this rule is rigorously applied only in Bulgaria. Most of the time this requirement is mitigated in favour of persons who have been unable to fulfil their civilian obligations. Thus the Spanish, French, Hungarian, Italian, and Swiss codes admit that rehabilitation can be obtained if it is established that the offender could not pay sums of money he owed. The Belgian code which demands payment by the offender of damages and costs, shows leniency only towards the fraudulent bankrupt.

4. Conditions of required time

Judicial rehabilitation is as we have said earlier, a favour granted to an individual who is considered to be an occasional offender. To make sure that the offence was only an accident in the life of the person concerned, it is necessary to put the latter to the test. This is why all texts on rehabilitation prescribe that a certain amount of time elapse between the time at which the sentence was terminated and the time at which the proceedings can be taken up.

We have the procedures of several countries here which you will be able to read.

This period of required time varies from three to fifteen years, depending upon the particular legislation. Most codes make provisions for two or three respites the length of which is in proportion to the seriousness of the sentence. Five years is the period most generally allowed however.

In keeping with what we have said before, the respite begins running from the time the sentence has been terminated.

5. Cases where the preceding conditions are annulled

The French and Swiss legislations give more flexibility to the conditions for rehabilitation when the applicant has accomplished an act for which he is deemed worthy of a particular reward.

The Swiss code no longer subjects the request for rehabilitation to any condition of required time, when "a particularly praiseworthy act by the applicant justifies" such a measure. The French code for its part adopts a yet more radical attitude in stipulating that "if the condemned person has since committing the offence been of signal service to his country and this at the peril of his life, the request for rehabilitation is subjected to no condition of time, nor to the carrying out of the sentence. In such cases the court may order the rehabilitation, even though costs and damages have not been paid."

6. *Cases where the preceding conditions are aggravated*

Contrary to what occurs in the preceding hypotheses, there are cases where ordinary conditions are not adequate. Legislators are of the opinion that in certain circumstances the conditions for judicial rehabilitation should be made more stringent. It has thus been decided that recidivists and habitual offenders should be treated with more severity than occasional delinquents. This is why the Belgian, Hungarian, and Italian tests prescribe that a period of ten years be elapsed between the date of expiration of the last sentence and that of the application for rehabilitation. In France the normal period of required time is doubled for recidivists, for those who have already benefited from rehabilitation and for those who have had their sentence invalidated by prescription.

All these provisions show the same preoccupation; that of imposing upon the offender a period of probation proportionate to the seriousness of his offences. The applicant must prove that he has reformed.

7. *Cases where rehabilitation is impossible.*

Various legislators have even been harsher towards certain delinquents; they have reached the decision that under certain circumstances rehabilitation is radically impossible. We have seen earlier that there are sentences in Hungary which exclude any request for rehabilitation. The Belgian law states that rehabilitation cannot be solicited by anyone who has already benefitted from it. In this hypothesis it is estimated that the rehabilitated person who has not taken advantage of the lesson cannot claim to be reformed.

Procedure

If the convicted person fulfils the prescribed conditions in order to solicit rehabilitation, he is still required to conform to the rules of procedure imposed by the law. We have already noted that judicial rehabilitation must be applied for; it is not obtained automatically as is the case for legal rehabilitation.

So let us look into foreign legislation in order to find out what persons may request rehabilitation, and then let us see who is the appropriate authority to deal with the request. Then we will examine the judicial measures which must be instituted.

1. *Who can apply for rehabilitation?*

According to all legislations judicial rehabilitation can always be solicited by the condemned person himself. In fact, this is what generally happens.

Certain texts nevertheless grant this right to other persons. Thus, the French code provides that rehabilitation can be solicited by the legal representative of the condemned person if the latter is under judicial disability. At certain times it was thought that the family could draw more satisfaction from the rehabilitation of a deceased convict. Provisions exist in the Bulgarian and French codes authorizing the heirs to solicit judicial rehabilitation when the guilty person is deceased.

Furthermore the Belgian and French legislations specify explicitly that they offer the benefit of rehabilitation not only to their own nationals but also to foreigners.

2. *Who is the qualified authority?*

In general, it can be said that rehabilitation must be decided by the judicial authority. This rule has two exceptions; in Iceland it is the President of the Republic who deals with the request for rehabilitation, and in Spain it is the department of Justice. But in the latter case the decision depends upon the preliminary report of the court which has passed the sentence.

In all other cases rehabilitation is decided by a court. It must still be determined which one is qualified. In certain legislations it is the court which has passed the sentence for which rehabilitation is being sought. In Italy it is the court of appeal of the place where the sentence was pronounced. In Belgium and in France, it is the Grand Jury.

3. *Proceedings*

The court to which the request for rehabilitation has been referred has all powers of review. In general, it is never obliged to grant rehabilitation. We have already explained what are the reasons for the rules governing rehabilitation. All legislations uniformly contain the same obligation, to the effect that the condemned person must have led an exemplary life since his sentence was passed. But, in any case, it is up to the court to decide whether the behaviour of the claimant has been above reproach. In order to do this, it must gather useful information from the various places where the condemned person has resided. It is especially important to know where the applicant has resided since his conviction, what his occupations have been, and also what his means of existence were.

I think I should again read that phrase: It is especially important to know where the applicant has resided since his conviction, what his occupations have been, and also what his means of existence were.

As opposed to what happened in the case of legal rehabilitation these investigations which are required by judicial rehabilitation have as we have already emphasized a drawback. These are not always carried out with the proper discretion. This is why certain condemned persons who are frequently those most worthy of interest because of their efforts to repay their mistake, hesitate to ask for rehabilitation: they fear that the indiscretion of the inquiry may reveal the sentence which they have managed to hide to the public and especially to their employer.

Once a court has at its disposal all the necessary information it has the choice of two solutions: to grant rehabilitation, or to refuse it. But since this refusal is not final it does not stand in the way of a second proceeding. The court may judge that the condemned person's behaviour has not been good enough; but this does not mean that the applicant is not capable of reforming himself. After an additional period of probation there is nothing to prevent him from making a new application for rehabilitation. In Hungary this period is indeterminate and in Switzerland it cannot exceed two years. In France the code provides that a new application must be made two years after the dismissal of the first request and in Italy the text states that in order to make a second application a period of time equal to that required for the initial request is required.

IV. *The Effects of Rehabilitation*

Whether legal or judicial, the effect of rehabilitation is to put an end for the future of the judicial consequences of the conviction. The condemned person reclaims those rights of which he was deprived: paternal authority, the right of guardianship, the right to testify, the right to vote. The spouse of the convicted person can no longer take advantage of the conviction in order to obtain a divorce. But rehabilitation does not have any retroactive effect. For instance, a divorce obtained by virtue of the criminal conviction anterior to the rehabilitation is upheld.

Rehabilitation entails a general striking out of the sentence from the criminal registers. But this striking out of the sentence is not done in a uniform manner in all countries. In Belgium an extract from the rehabilitation file is transcribed as a marginal note to the final decisions delivered against the condemned person.

This written mention of rehabilitation is done differently in those countries which keep a judicial record; the entry concerning rehabilitation is then made into the judicial record besides being entered as a marginal note to the sentence. The judicial or police record was created in order to simplify the identification of delinquents. It implies the use of files or registers in which the sentences pronounced against persons born within the district of the court are recorded in alphabetical order.

All criminal sentences rendered against an individual no matter by what court, are thus centralized in one and the same place. It can thus be seen that this institution simplifies investigations.

Set up in order to facilitate the task of the police and of the courts, the judicial record hinders the radical and total striking out of the sentence. This is why rehabilitation does not entail the total deletion of the sentence in those countries where the judicial record system is in force. Certain authorities such as the judicial and military authorities in France, are allowed to examine the files on which are recorded not only the rehabilitation but also the initial sentence.

Yet, all in all, the method employed gives cause for satisfaction to the ex-convict. In fact, once he is rehabilitated he no longer has to admit his preceding conviction; as far as everyone is concerned he has no judicial record. When required to vouch for his respectability, he can show a report free of any conviction. And this incidentally is what is aimed at.

Should the ex-convict who has been reinstated in his rights be brought again under prosecution, he is not to be considered as a recidivist.

In a general way rehabilitation is final. However provision is made in the Italian code for the repeal of the rehabilitation should the rehabilitated person commit a deliberate offence within the five following years.

Section 118 of the Spanish criminal code abolished the effects of the rehabilitation if "the rehabilitated person commits a new offence which comes under the same heading as the one which had given rise to the annulled inscription."

Whatever may be, it can be said that the various legislations bring about the same result short of a few minor differences. They make it possible for the ex-convict who has given tangible and lasting proof of his reform to be reinstated in the legal status which he had lost through the effect of the conviction.

Conclusion

At the end of this comparative study it is interesting to emphasize the salient features presented by the legislations which we have just analyzed. After we shall see in what measure the rules in force in other countries may be valid in Canada.

We have noticed that the provisions on rehabilitation are guided by the same motives; they aim at the same object. All of them have been adopted under the pressure of social imperatives in order to permit the complete readaptation of the punished and reformed convict. They fit within the framework of a humanistic crime policy in conformity with the Social Defence movement which tends to consider the entire problem of crime as a social problem.

If the guiding principles for rehabilitation are the same in different countries, we have noticed certain differences in the techniques which are used. We have noticed in particular that few countries admit legal rehabilitation. Likewise, differences in the conditions and effects of rehabilitation have also been brought out.

We have seen that certain legislations show varying degrees of severity towards convicts, either by imposing stringent conditions or by refusing all leniency to the rehabilitated person who commits another crime.

The differences reside in the methods of application of principles which are the same. The nature of the legislation depends upon the system in force. The demands made by texts are not very rigorous in a liberal minded system, and vice versa.

It remains to be seen whether or not a liberal attitude should be shown in a field such as rehabilitation which is part of criminal law.

It should not be lost sight of that the aim of rehabilitation is essentially to give a chance to the person who has given proof through his irreproachable conduct that he regrets his past offence. The condemnation has had an edifying effect upon this individual and it is entirely legitimate to put a procedure at the disposal of this occasional criminal which will permit him to obliterate the effects of the conviction. It seems that rehabilitation is actually intended by the nature of its conception, for this latter category of condemned persons.

This is why one should ask whether it is opportune to feel the same solicitude towards both habitual delinquents or hardened criminals.

With the aid of these observations let us see to what extent the principle of rehabilitation could be introduced into Canada. There is no question of course, of conceiving a detailed legislative project, but rather of examining what the general rules are which should be taken into account in the Canadian penal system.

(a) The Principle

Rehabilitation is without a doubt an institution whose principle should be retained. It will certainly be desirable to have it introduced into Canadian criminal legislation.

It should be noted that the constitutionality of a federal act on rehabilitation should not be questioned, due to the fact that under section 91-27 of the B.N.A. Act criminal law and criminal procedure fall under the jurisdiction of the Canadian Parliament.

(b) *The method*

Should the introduction of legal rehabilitation into Canada be contemplated?

We have noted that in France, where it is in force, it has been somewhat criticized although it is more frequently applicable than judicial rehabilitation. Furthermore, it entails some kind of material organization. We have noted that in France, for instance, the judicial record system makes possible some sort of inventory of sentences pronounced against an individual. The court clerk simply has to consult the report in order to ascertain whether the conditions for legal rehabilitation have been met.

The introduction of legal rehabilitation into Canada would only be conceivable if it were accompanied by the adoption of further measures in order to ensure the recording of all sentences pronounced against a same person.

On the other hand, the adoption of the system of judicial rehabilitation by Canada does not create any major problems. By examining one by one the conditions stipulated by foreign legislations it is easy to find the solution best adapted to the Canadian environment.

Particular attention should be given to the following point: what would be the most appropriate rules of procedure?

We have noted that in Europe the task of decreeing the rehabilitation generally came under the judicial authority and more precisely under the court dealing with criminal matters. This is to be explained by the fact that rehabilitation implies some measure of inquiry, a choice, also a penal decision. If by following these examples, the Canadian Federal Parliament decided to entrust the task of dealing with rehabilitation to the various existing criminal courts it would reach two objectives:

On the one hand, it would endow rehabilitation with a national character, and on the other hand, it would meet requirements of a practical nature.

Due to the division of powers between the provinces and the Federal Government in judicial matters, conflicts of jurisdiction which could be detrimental to the interests of the litigants should be avoided. Would it not be desirable to make it possible for any condemned person to benefit from rehabilitation in all the Canadian provinces?

This could be prevented if the province were asked by virtue of their powers in the matter of administration and justice to set up a new organism entrusted to deal with applications for rehabilitation. Given this hypothesis, rehabilitation could not be solicited in those provinces which would not adopt the necessary measures in the matter.

This type of difficulty could be avoided by empowering the present criminal courts without having recourse to any new organisms.

Of course, the problem could be solved by choosing a national court, such as Exchequer Court for instance, in order to adjudge rehabilitation. But this option would raise difficulties of a practical nature which would not be met by handing over the care of dealing in the matter of rehabilitation to the usual criminal courts.

The latter solution offers two advantages for the complainant.

In first place, it is obviously of practical interest.

At the present time, the only authority empowered to bring the proof of the conviction is either "the person who has pronounced the sentence or the Court Clerk" or "the person who made the summary conviction or the Clerk of the Court to which it has been referred". Consequently, in all cases it is the judicial authority which has pronounced the sentence who is qualified to issue official proof of it.

Would it not be legitimate under these conditions to confer upon the same authority the power to adjudge rehabilitation?

The condemned person would be called before the court which has passed sentence against him and to furnish the proof that he has fulfilled the conditions for rehabilitation. When adjudged, the rehabilitation would be entered as a marginal note to the sentence. From this moment on, neither the judge nor the Clerk of the Court would be able to issue any proof of the previous conviction. And the ex-convict will no longer have to mention the former criminal sentence in any official declaration or in an application for employment.

Furthermore, this procedure would have the advantage of insuring a maximum of discretion to the request for rehabilitation. We have seen that this factor is of definite interest for the condemned person who has reformed himself. By avoiding the intervention of different organizations or courts in the rehabilitation proceedings a certain amount of publicity would also be avoided.

These observations are essentially of a general nature. They are guided as much by the requirements of the Canadian Federal system as by the interests of the justiciable parties.

In view of the eventual adoption by Parliament of a Federal act on rehabilitation, these remarks tend to emphasize the difficulties which might occur rather than to formulate actual proposals.

The CHAIRMAN: Thank you very, very much indeed, Mr. Lachance. I am going to read the following motion, moved by Mr. Wahn, seconded by Mr. MacEwan:

That reasonable living and travelling expenses be paid to Mr. A. M. Kirkpatrick, who will appear before the Committee, Tuesday, April 11th, 1967.

Any discussion? What is your wish, gentlemen? All those in favour? Agreed? Carried.

Now it is nearly 12 o'clock. Mr. Lachance, we usually have a few questions. The members might confine the questions to as few as possible and maybe you would undertake to answer them. Do any members want to ask Mr. Lachance anything about his brief? I am going to suggest that, as the main part of it has been read, with the exception of the sources of the material, it be filed not as an appendix but as an exhibit to today's proceedings so that it will be available for study if anybody wants to check the reference. Is that agreed?

Some hon. MEMBERS: Agreed.

The CHAIRMAN: Are there any questions?

Mr. GILBERT: Mr. Chairman, I think I should preface my remarks by congratulating Mr. Lachance on his excellent presentation and the research he did.

The CHAIRMAN: We all agree with that.

Mr. GILBERT: Mr. Lachance, in view of your comparative study of this problem, I would like you to direct your mind to Mr. Tolmie's bill which has, as the main categories, first of all, the type of offence and then, secondly, the age of the offender and, thirdly, time limits with regard to when the offence was committed and also the number of offences that had been committed. I would ask you first what you think of the type of offence. He has made a distinction with regard to the offences. Does your study reveal that these other jurisdictions have made the same type of divisions? I notice—I think it was in France—that there was a time limit with regard to the offences. But, is there any distinction with regard to the type of offence? Or, should it be all offences?

Mr. LACHANCE: Well I think all offences should be included. But what about the death sentence?

Mr. GILBERT: This is the distinction Mr. Tolmie made. He said it should be excluded with regard to offences where the life imprisonment or death penalty is imposed. We in Canada have life imprisonment and death imposed, say, in rape cases. Should Mr. Tolmie's bill have an exclusion with regard to rape cases, or do you think it should be retained?

Mr. LACHANCE: I do not think it should make any exceptions. If we consider rape, I think this is something for which a person convicted of rape should be treated in prison in order to be cured. It is a case where the doctors look very seriously into the matter. Once the person is out of prison, I think he should have the same treatment as any other person.

Mr. GILBERT: What do you think of Mr. Tolmie's idea of rehabilitation when there has been only one offence committed? You find many offenders commit more than one offence and his bill is directed to the commission of one offence. Do you think it is a little too narrow in that aspect?

Mr. LACHANCE: I would not make any exceptions.

Mr. GILBERT: You would not? Just one offence, one bite at the apple and that is it?

Mr. LACHANCE: It would depend on whether a person has committed different offences or the same offence twice. That makes a difference. My personal feeling is that a man who has been convicted at the age of 16 or 17 or 18 of stealing a car and has been convicted for six months, and then five years later is convicted of rape or any other offence—

Mr. TOLMIE: Mr. Chairman, just for clarification—

Mr. LACHANCE: There is no similarity in that. I think we should not make any exceptions.

Mr. TOLMIE: Just for clarification, clause 655A. (1) of my proposed bill does not restrict the situation to one offence. Perhaps the wording is ambiguous. This clause, if it came into effect, would provide that if a person had a clear record for 2 years, even if he had 10 offences prior to that, he would still have his record cleared. There may be, as you say, some ambiguity in the actual wording, but the purport and intention of that section is not to restrict it to people who have been convicted of one offence. The only question of one offence is pertaining to infants.

When an infant incurs one offence, then automatically, at the age of 21, that record would be expunged. This is the only reference to one offence. This is just for the purpose of clarification.

The CHAIRMAN: Thank you, Mr. Tolmie.

Mr. GILBERT: Mr. Chairman, does Mr. Tolmie mean that if a person is convicted, say, of three offences, it is 12 years after the commission of the third offence?

Mr. TOLMIE: What it means is that after 12 years from the date of the paying of the penalty or the expiration of the sentence itself, not from the date of conviction, then even though there might be five or six offences prior to the 12 year period, automatically the record would be expunged. It is a clear 12 year period after the sentence has been served, not at the date of the conviction.

The CHAIRMAN: Are there any other questions? Are you through, Mr. Gilbert?

Mr. GILBERT: Just one more short question, Mr. Chairman. Mr. Lachance, Mr. Tolmie has made a distinction with regard to the age of the offender. What do you think of that? He affords to a young man between the ages of 16 and 21 a procedure to which a person over the age of 21 would not be entitled. In your studies, has that distinction been made in Europe?

Mr. LACHANCE: Well, if I may be allowed to criticize—

The CHAIRMAN: Mr. Tolmie does not mind.

Mr. LACHANCE: I am very happy that our friend Mr. Tolmie has presented this bill, but if I understand it correctly the record would automatically be expunged at age twenty-one. But for a person who has been convicted at the age of twenty and a half, I do not see how the destruction of official records could be done before at least two years after any sentence has been completed. Does this answer your question?

Mr. GILBERT: Yes, thank you very much.

Mr. LACHANCE: Especially for a person who has been convicted at the age of twenty and a half or twenty years.

Mr. GILBERT: One final question, Mr. Chairman. I notice that he dealt quite extensively with the procedure in respect to expunging the record, and you noted that here in Canada we may be able to do it through the Exchequer Court, and then—

Mr. LACHANCE: I like the idea.

Mr. GILBERT: You like the idea?

Mr. LACHANCE: I like the idea very much. It should be left, I think, to the Exchequer Court.

Mr. GILBERT: And then you indicated from your study that he had to fulfil certain requirements, (1) of residence, (2) of work, and (3) of means of support, I think it was. Now, what about organizations such as the John Howard Society, probation officers, and so forth? Would it be necessary to get reports from them concerning an individual, and just how would he do it? Would he do it by oral evidence or affidavit evidence, and so forth?

Mr. LACHANCE: All kinds of evidence. If I am allowed to present this brief to the Exchequer Court, then it could evidently be done very easily by amendment to the Exchequer Court Act. I think a very easy way it could be done would be by just an ordinary letter sent by the delinquent, providing there was a law which said after so many years you can obtain a description of your criminal record, and you apply by writing a letter to the Exchequer Court or the clerk and, of course, the clerk could send a notice to all Attorneys-General of all the provinces or the Minister of Justice and if after, let us say, thirty days there is no opposition from any provincial Minister of Justice or Attorney-General of any province, then the court would grant immediately, *ex parte*, the expunger. Of course, if there was any opposition from the Minister of Justice—who would be in a better position than the Minister of Justice of each province to make a decision on this—then the Exchequer Court could hold sessions here and there in different provinces at certain intervals, and whether it is once or twice a year it does not matter that much as long as it sits regularly once or twice a year, and they will hear the case for the opposition and render a decision.

Mr. GILBERT: Thank you very much.

Mr. RYAN: What would you think, Mr. Lachance, of making it follow automatically in crimes that did not involve violence but makes it discretionary in cases that did involve violence?

Mr. LACHANCE: Well, I think I have already answered the question. I do not see that there should be any exception.

Mr. HONEY: Mr. Chairman, with your permission I would like to ask Mr. Tolmie one question for further clarification. You referred to the 12 year period running from the expiration of sentence.

Mr. LACHANCE: By the way, I think it is too long.

Mr. HONEY: The actual wording is "served the sentence imposed on him". In the case of a prisoner being paroled after serving five years of a 15 year sentence, would the 12 years start to run from the time he was given his liberty or from the expiration of 15 years?

Mr. TOLMIE: I have not gone into that refinement, but at first blush I would suggest that the 12 year period would run after the time of the parole. In essence, if he is paroled after five years he has been considered to be perhaps ready to enter society again and has paid his penalty, so I would think that the sensible thing would be to run the 12 year period from the start of his parole, not after the sentence, which has not actually been completed.

Mr. HONEY: Thank you. When we come to the clause by clause study of this bill we might want to clarify that a bit.

The CHAIRMAN: Well, are there any more questions?

Mr. FOREST: If I may add to that, from what I have learned—and it is only a personal opinion—it should not be less than two years or more than five years.

(Translation)

Mr. Lachance, are we to understand, from the studies on various rehabilitation systems in several European countries that the United States and the United Kingdom have no legal or judicial rehabilitation systems?

Mr. LACHANCE: Oh, no. Unfortunately, I did not read you the foot notes at the bottom of the pages. I gave some examples but there are other notes referring to problems in England and in the United States. However, in the United

States, they do not destroy criminal records, you can be sure of that. Except for France, not many countries in the world have progressed very far in the elimination of criminal records, and this is something I cannot understand. I might add that here in the Canadian Public Service, the door is closed to those with police records. I do not see how we can ask private enterprise to open its doors to those with police records when the government does not set the example, particularly as this costs us a great deal. The lack of such legislation is costly because we are losing the benefit of considerable manpower and are having to support the families of these people while they are unemployed. England is not much farther ahead and the United States, even less so, with regard to the expunction of court records.

Mr. FOREST: We would require a new system of criminal records, different from the one now administered by the provinces. We could propose a national system of criminal records to the Exchequer Court.

Mr. LACHANCE: This would mean a federal-provincial conference on the matter, along with the various provincial justice bodies, to establish a really satisfactory system.

Mr. FOREST: I think it would be preferable to leave the matter of judicial applications with the ordinary criminal courts such as the courts of the Sessions of the Peace, which are closer to the individuals requesting rehabilitation. It would be easier for them to carry out enquiries than to have everything centralized in the Exchequer Court at Ottawa, unless the Exchequer Court were to split up and sit anywhere in the country. This would give it a greater scope.

Mr. LACHANCE: Yes. The Exchequer Court would have to sit in a lot of places in order to study this question. I am also speaking of the regional courts. It is rather difficult to find the ideal solution, but I think we should at least try. There is certainly a chance of finding the right procedure.

Mr. GOYER: Mr. Lachance, in your brief, you emphasize the different methods of eliminating the legal consequences of conviction, and you mention what is being done in other countries. For instance, in Belgium and in France, rehabilitation means expunction of the conviction and its resultant disabilities. This is the case in several countries, although in Bulgaria, they claim that rehabilitation does away with the sentence and its consequences. This goes back to the question raised by Mr. Wahn with regard to Mr. Tolmie's bill; should we place more emphasis on the conviction when attempting to give legal effect to rehabilitation or on the sentence and its consequences?

Mr. LACHANCE: I do not think we can wipe it out—this would not be an easy matter. We cannot obliterate what has taken place; I mean that would be as if, for all relevant purposes, there had never been a sentence. This would be the ideal, but I am not sure it would be feasible.

What matters is that the fellow we are talking about, who has paid his debt to society, should no longer feel that he is being watched all the time; he should no longer have to feel that somebody can always throw this conviction up to him.

In my opinion the effects of the criminal record are far more subjective than objective. As I said, the man is no longer afraid that people are going to cause him trouble; prevent him from applying for jobs and remind him of his criminal

record. The fellow knows that he has been convicted; he cannot forget it. This is why I think that we should expunge his conviction. But to eliminate the sentence would be rather difficult.

To simply the question, the law could perhaps say that we can no longer hold a conviction against an ex-convict, rather than ordering previous records cancelled or expunged.

Mr. GOYER: But is this not precisely the intention of the legislator, to have not only the files destroyed, but the ugliness of the sentence, the very fact that he has been found guilty?

Mr. LACHANCE: This would be the ideal, Mr. Goyer, but what I wanted to point out is that this too is a subjective matter. It is extremely important to the individual that he no longer feel like a pariah, a social outcast.

Mr. GOYER: You support Mr. Tolmie's idea that notwithstanding the sentence or the seriousness of the offence, the time required before a rehabilitation can be granted should be the same. According to your brief, I note that the French Code draws some distinctions, rather important ones, with regard to the relationship between the seriousness of the offence and the time required for rehabilitation. For instance, in the case of a fine, the period is five years; in the case of a single sentence, imprisonment for a period of less than six months, the time involved is ten years, and so on. When a relatively less serious offence has been committed, should we not take this into consideration and grant rehabilitation sooner than when a more serious crime has been committed?

Mr. LACHANCE: I may have been misunderstood, but I think that there might be a minimum waiting period of two years and a maximum of five. The length of time could be based on the number of years spent in prison. If, for example, the ex-convict has spent three years in prison, he could apply after three years; if he has spent four years in prison, he could apply after four years. There could be a maximum of five years and a minimum of two. I suggest a minimum of two years, because I think there should be a minimum, and a maximum of five years to allow the ex-convict sufficient time to lead and enjoy a normal life after rehabilitation.

Mr. GOYER: But you do agree that the time lapse should be directly related to the seriousness of the offence?

Mr. LACHANCE: There would be a certain relationship between the time lapse required and the seriousness of the offence as, generally speaking, the Court bases the sentence on the seriousness of the offence, but there can also be other considerations; as, for instance, in the case of a recidivist. The sentence is determined by the gravity of the offence and by other factors, as you know, Mr. Goyer. A sentence can be for five years or ten years for a number of reasons.

(English)

The CHAIRMAN: Mr. Goyer and Mr. Lachance, we have another witness. Would you mind if I called him? I have no doubt that you and the other members of the Committee can discuss with Mr. Lachance the refinements of this matter, and so on.

Mr. GOYER: I have finished.

The CHAIRMAN: Thank you very much. Thank you again, Mr. Lachance, for your very informative statement on the subject matter with which this Committee is concerned. It will, of course, be of great use to the Committee when they are studying the problem.

If I may, without further delay, I will call upon Mr. Kirkpatrick. Mr. Kirkpatrick, as you all know, is the executive director of the John Howard Society of Ontario, and practically all his working life has been spent in dealing with matters of what you might call the rehabilitation of the criminal element which passes through the hands of that society. I am not going to take up the time of the Committee on any fuller introduction because I am sure that Mr. Kirkpatrick can tell us what he has been doing and I will leave it to him to make his presentation to this Committee.

Mr. A. M. KIRKPATRICK (*Executive Director of John Howard Society of Ontario*): Mr. Chairman and gentlemen, I would first like to congratulate this Committee, and especially Mr. Tolmie and the Solicitor General, on the interest and concern that they are showing in this particular matter of criminal records. The problem relates to the second punishment which society imposes on men released from penal institutions. The stigma of a prison sentence affects not only social relationships but employment, bonding, immigration visas, automobile insurance, life insurance and, in some jurisdictions, the right to hold public office.

I would like to read a couple of short letters which indicate the way in which this matter bears on the lives of human beings. We received this letter a few weeks ago from a woman:

About a week or so ago I heard a representative of your association speaking on T.V. about pardons. Unfortunately I did not catch his name and I would like to know who it was and also if there is any M.P. who is interested in this subject.

I am interested in this because about ten years ago my husband was convicted of theft from the firm he worked for, of \$4,500.00, and received a 2 year suspended sentence. Every penny has been repaid and he has been very straight since but he cannot get a decent job because there is always this question of the conviction. For ten years the whole family has tried very hard but this is an insurmountable obstacle and on occasion even percolates down to the children and myself. It has been very difficult to scrimp and save to repay the money and try to keep the children emotionally secure as well as shelter, feed and clothe them. I have no kind of training myself and although our children are quite bright, we cannot afford anything in the way of training for them either. My oldest daughter left high school with her Grade 13 certificate and it was awfully hard to keep her in high school even and of course getting a job with only Grade 13 is tough. We have a 14 year old who is an honour student in high school but really I feel she should change to a technical school, to be a waitress who needs latin and mathematics and she can start work at 16 but the principal does not agree. . . My husband can only get work with men who want to take advantage of his training and are not very satisfactory employers for various reasons. He was a chartered accountant. The large companies just won't even consider his applications and this includes the government although they need trained accountants. He is also getting

older now and this makes it even worse. We have moved so many times but nothing ever works out... For one mistake this is a whole life and really five lives lost. I don't really think there is any excuse for dishonesty but why take such a toll in punishment? After all, many people are not that honest but are not discovered and at least some one with a conviction has the extra incentive to be twice as scrupulous as the one with a perfect reputation because of the strikes against them already.

This is an anonymous letter that came in just a short time ago:

Surely, in this age of the Atomic bomb and mass extermination it is a time to revise our outdated laws and give our fellow humans being a second chance at a respectable life. As a teenager, I was convicted and given a suspended sentence. This happened twenty-five years ago and it has been like a chain around my neck. Why bother to give a youth a suspended sentence when he can never get a bond, never leave the country and never be free of exposure. It is not going to change my life now if the Ontario Government decides to change its policy on criminal records, but I beg you to urge for this change. If you could even convince them to erase criminal convictions for teenagers up to 21 years that did not involve a sex deviation or a psychopathic crime, it would be a start in the right direction. At least these young people would have a second chance if they stayed on the straight and narrow for say five years. These people have no chance now that employers and bonding companies have access to all records. A quiet respectable man who hopes you win your fight.

Forever forced to be anonymous.

This was Mr. Alfred B., 42 years of age, with a history of one criminal offence. He was convicted of robbery with threat of violence. He was released on ticket of leave supervision to our society in 1955 and completed this supervision in 1956. He has now been in the community for just short of 12 years. He has been free of his parole for over 10 years and has worked steadily ever since his release. He is now married and has a child. We have been discussing by telephone during the last several months the handicap of his record, and his current job has made him extremely cautious in this area. He did not reveal his actual name during our discussions except on the last occasion. Within his own company he has become so successful that it is necessary for him to travel out of the country and to handle funds for the company.

He has lived in a constant state of concern that his situation will be ascertained by a bonding company or that he would have to turn down offers to go to the United States on business. His wife knows about his record but he is not prepared to tell his child. He has considered the possibility of seeking an ordinary pardon, but has been fearful about allowing such an application to go ahead because his employers might become aware of it through any enquiry that took place. He also realises that such an ordinary pardon would not wipe the slate clean. His most recent concern about the handicap of his record is related to an opportunity which he will soon have of buying a share in the business and becoming a director of the company.

The problems faced by the ex-inmates regarding employment are:

- (1) He has an employment book without stamps.
- (2) He has a lack of references.
- (3) He has a gap in his work record.
- (4) He has an employment application form with question as to criminal record or bonding. The question usually is: Have you been convicted of a criminal offence? Have you been refused a bond? Can you be bonded?

We have suggested re-phrasing of the question to: "If you have been refused a bond or think you might be refused a bond or if you have had a criminal conviction, please make a statement in a sealed envelope concerning the circumstances and attach it to this application".

Now, the problem here is to get the man past the reception desk and into the employment interview. We made a survey of employment application forms in Toronto in 1962;—Out of 67 forms, 18 asked about criminal record, 13 asked if the applicant could be bonded, 12 asked if the applicant has ever been refused a bond. In all, 43 out of 67 were designed to reveal the presence of a criminal record.

The ex-inmate faces the dilemma of answering "Yes" or "No" without qualification being requested. He knows from his own experience and that of others that if the answers "Yes" he is unlikely to get the job. If he says "No" he may get the job and then at a later date, when his record has been turned up by the bonding company or the personnel department, he may be called in and told that since he falsified his application, he lied and therefore cannot be trusted and is consequently released from employment.

Blanket bonding covers a great many areas of employment even to delivery jobs and truck driving. This type of bonding is done at reasonably low cost and often all employees in a firm are bonded. The employees are apparently investigated by an investigating agency which, in a sense, relieves the employer of certain aspects of normal personnel employment procedure. It is obvious that these investigating agencies have various means of obtaining criminal records.

Primarily the Fidelity Companies Association takes the position that there is no general policy for or against the bonding of ex-inmates but that the bonding of any individual, including those with criminal records, is considered to be strictly within the scope of the individual underwriting company's standards and that each application is assessed on its own merits and if there is any sign of instability the bond will probably be refused. In other words, each company assesses its own risks and assesses its own applications, and as a result many other applicants than ex-inmates are refused bonds.

The companies state that ex-inmates have been bonded and we learn from time to time that this has happened in individual cases, though in practice ex-inmates have great difficulty in securing a bond and seem usually, in our experience, to be refused even though the employing company may wish to hire the applicant in full knowledge of his criminal record.

Reading from *The Lodestar*, which is the inmate publication of the Beaver Creek Correctional Camp, of December 1966—this is a penitentiary correctional camp—this was the response to a letter sent to the Canadian Surety Company.

Dear Mr. So and so:

Thank you for your enquiry of October 24 concerning bonding for ex-inmates. This company has no definite policy regarding the bonding of such persons and applications for bonds would be received and dealt with according to the particular circumstances of each case. The nature of the applicant's duties would be considered in relation to his past record. We can say that the ex-inmate record alone would not necessarily preclude him from obtaining a bond. When an application has been received and any investigation necessary has been completed the final decision is a matter of judgment based on many years experience. There are therefore no definite rules laid down for arriving at a decision, and very often there are many facts to be taken into consideration before arriving at same. You may find a fidelity bond application of interest, and one is attached hereto. Yours very truly.

Now take the case of Francis B. A company knowingly employed this ex-inmate as a truck driver. The firm was bought out and reorganized and the man was continued in employment as he had done a good job with the former company. In the process of reorganization of the new company the insurance program was reviewed and the insurance company learned that he had a record and refused to insure the company's truck if he was continued in employment to drive it. The firm made representation to the insurance agent who in turn made representation to the underwriters, who refused to change their decision despite the fact that there is no driving conviction on his record, though he was sentenced for possession of counterfeit money and fraud. In Toronto we talked to the assistant manager of the department involved but the company refused to change its decision since the public liability involved on this one truck would be a million dollars, which they felt was too much to gamble on this man's stability, particularly since he had been released for less than a year. He stated they have bonded some people who have criminal convictions but this is after a period of time in which they have proved their stability.

The case of Gordon W. This man has three convictions for indecently assaulting young males, and has served a sentence in an Ontario Reformatory and also in the penitentiary. In the year following release he applied for about a hundred different jobs and was turned down because of his criminal record, because of the nature of the record, because of the fear that he might be blackmailed, because he has been refused a bond and because of lack of experience for certain types of employment. He has a favorable work record with a marked degree of stability as an accountant or office manager for several clubs, organizations and business firms, being described as able to accept responsibility and also to take direction. He obtained a job with an automobile company and his work was considered quite satisfactory until the company was advised that he was being excluded from the bond. The company wished to retain him but the underwriters refused. We talked to the president of the insurance company and he said they felt the opportunity for blackmail was present and that the man would be greater than a normal risk. They offered a sort of co-insurance proposition which was so unfavourable to the company that they had to release the man from employment.

It seems obvious that in connection with employment and bonding there should be some way for the ex-inmate to indicate in his application that he has been relieved of the burden of his criminal conviction.

It would seem that this could best be done by the increased use of the "pardon". In this regard the Fauteux Committee, which reported to the Minister of Justice in 1938, had this to say at page 35 of its report:

"In our opinion consideration should be given to the establishment of a procedure for the grant of pardons, with or without conditions, on a much more liberal scale than is now the case. Important factors should be, of course, the relatively trivial character of the offence, the nature and very limited number of past convictions, the continuity for substantial number of years of admittedly law abiding conduct and respectable life in the community, and the undoubted assurance of its continuation. Such a procedure would offer to a past offender a further and powerful incentive, consistent with the promotion of preventive justice, to maintain the highest standard of respectability in the community".

It might be well at this point to define what is meant by pardon. A free pardon is granted on the grounds of innocence established and admitted by the Crown, and an ordinary or conditional pardon is granted on special considerations of an unusual character. The free pardon is an act of grace to which the recipient is morally entitled, while the ordinary or conditional pardon is a pure act of grace. The instrument granting the full pardon reads:

"I have pardoned, remitted and released him...of and from all and every the penalties to which he was and is liable".

Section 655 (3) of the Criminal Code reads:

Where the Governor in Council grants a free pardon to a person, that person shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted.

Then these words "shall be deemed never to have committed the offence" are of vital importance and should be applied to ordinary or conditional pardon as well as the free pardon.

This would permit an applicant for employment to reply "No" to a question regarding criminal conviction on an employment application form. Then if he is later called in for an interview he can reveal that he has been pardoned and discuss the facts of his offence and have some chance of holding his job without being discharged for falsifying his application. The employer will then be able to assess the degree of risk, if any, in retaining the employee, who he has come to know, in the particular employment.

A period of years of responsible and crime-free living in the community should be required as a demonstration of suitability for pardon. It is suggested that this period be five years for persons of any age. It is well known by observation that the recidivist rate reduces sharply after the first two years following release. A recent study made in 1965 by Mr. A. Andrew of the staff of the John Howard Society of Toronto offered research proof of this observation.

In a study of 156 released penitentiary inmates he established that the incidence of recidivism steadily diminishes and approaches zero at the end of a two year period following release. He found that 44.6 per cent of the recidivism

took place in the first six months, 75.5 per cent by the end of one year, and 97.9 per cent by the end of two years. This indicates that little further recidivism is likely to take place after two years from release.

The Report of the National Parole Board for 1965 at page 7 reads:

"(e) The average time on parole before violation was 6 months".

This also indicates the crucial nature of the early period following release.

Hence, despite what might be considered a popular fear that an ex-inmate may recidivate at any time, the evidence indicates that five years should be ample time in which to place a judgment for pardon.

The expunging of records is often mentioned as a necessary factor but it must be remembered that even if the record maintained by the Identification Bureau of the R.C.M.P. were destroyed the record still exists in local police stations, commercial credit association files and in the memories of neighbours and responsible community agencies.

Total destruction of records at any period would probably meet with opposition from the police as detracting from good law enforcement procedures. But after a period of five years it would be simple and practical to protect and restrict the use of records of pardoned individuals by placing them in a separate "pardoned" file.

The response to enquiries concerning such records would then be that a search of the current files indicates no record. In the event of the commission of another offence the record could be then reactivated.

This would mean an amendment to the Identification of Criminals Act to provide for the separation and special treatment of such "pardoned" records.

Consideration should be given by the Solicitor General's Department to the setting up of a fidelity fund to make available premiums for coverage to the necessary limits for ex-inmates whose employers wish to hire or retain them in employment. This fund might need to be enlarged to provide guarantee of coverage in the event of loss since this is the basic problem faced by the bonding company. This could be done on an insuring basis similar to that of the N.H.A. mortgage insurance scheme.

The situation of the ex-inmate is different from that of the ordinary citizen since he has been placed in a "barred" class as a result of the legal consequences of his actions and faces a stigma which tends to produce automatic and blanket discrimination.

In considering the proposed Bill No. C-192 a number of points might be made.

Section (1) proposes a period of twelve years, though the present normal practice under pardon procedures is ten years and, as indicated earlier, a period of five years would appear to provide adequate safety for the public.

Section (2) provides that if convicted under the age of twenty-one years, on attaining that age he would in effect be pardoned. If convicted at age 20 and sentenced to two years, the person might well still be in jail and hardly a fit subject for pardon. It would be better to provide for a period of five years following release. There appears to be little objective reason for a distinction below age 21 years of five years as against ten years for older persons following

the serving of the sentence. Hence the two sections (1) and (2) could realistically be combined.

The wording

...shall be deemed not to have committed the offence for which he was convicted.

is highly important in both sections or if combined.

The proposal to place the matter before a court is not desirable. It would be better to handle the matter as ordinary or conditional pardons are now handled. At present, I understand, that this is handled by the chairman of the Parole Board and the executive director of the Parole Service. They have available very complete reports for the assessment of the applicant in an atmosphere of complete privacy. The suggestion of a court hearing would lead to disruption of the anonymity which the ex-inmate seeks to obtain in his civil life and would, I believe, discourage most applicants if such a court procedure were to be followed. In addition, there would be the problem of getting some uniform basis for decision-making in different courts and in different areas across the country. It would be difficult to obtain a common policy in this matter. Further, as indicated earlier, it would be preferable to relate this proposal to the ordinary pardon procedures which are selective, following a private investigation.

Section 3 proposes a restriction for which there seems no logical reason. If the person who has been sentenced for life or for an offence punishable by death has by his obvious re-establishment merited a pardon, it would seem appropriate that this should be available to him as a inducement and reward.

Section 4, as indicated earlier, might meet serious objection from law enforcement bodies. The difficulty might be overcome by having the records removed from the current indexes and kept in a special section for pardoned offenders so that they could be reactivated in the event that the person did commit another offence. Any enquiries should then be met by the response that there is no record of conviction in the current files.

The use of ordinary pardon after a period of five years should be of great assistance to many; but it has been suggested that the question on employment forms may be changed to read "Have you been pardoned for a criminal offence?" In addition, what does the ex-inmate do in the five year waiting period. It might appear that the remedy should be found in provincial legislation regarding civil rights under fair employment practices legislation, under which the right to work might be included.

In this matter the federal government should give the lead to private industry. The civil service application for employment asks the question:

"Have you ever been convicted of any offence other than (a) minor traffic violations, (b) in cases heard before a juvenile court? If yes, give details, indicating when and where the offences took place."

One of the commissioners has informed me that:

At the present time, any person who has been convicted of an offense is free to apply in any of our competitions and each case is judged on its own merits. Examining boards take into consideration such things as the nature and seriousness of the offence, how long ago it occurred, the kind of position for which application is being made and any other relevant

aspects that apply in arriving at an employment decision. This information is, of course, treated confidentially and anybody applying for a job can use a separate sheet of paper to give details of the conviction and this is always treated as confidential information. The general policy is to avoid placing an individual in a situation where he might be tempted to commit a similar offence.

This is a commendable statement of policy and it is known that some ex-inmates are employed by the Federal government; but there would appear to be many more opportunities available than are actually being provided to ex-inmates. With the millions of dollars being spent on the correction of the offender every effort should be made in a positive way to assist in his re-establishment by the provision of government employment in suitable situations.

This is a delicate matter as the employer has the right to decide who he wants to hire and he must assess any possible risk. It is the blanket discrimination, which undoubtedly exists, that should be removed so that each applicant can truly be assessed on an individual basis.

All employers as part of their corporate community responsibility should assume a share of this social obligation in the re-establishment of the ex-inmate who forms an increasingly large proportion of the potential labour force.

Thank you, Mr. Chairman.

The CHAIRMAN: Thank you very much, Mr. Kirkpatrick. Mr. Ramsey, do you wish to add anything?

Mr. RAMSEY (*Member of John Howard Society of Ontario*): No, I do not think so.

The CHAIRMAN: We are now open for questions. We have all listened to this very interesting statement by Mr. Kirkpatrick and the principle which he apparently is advocating of conditional pardon. Mr. Tolmie, do you want to ask some questions?

Mr. TOLMIE: Just one very brief one.

On the question of expunging records with the pardon, would the applicant have to apply himself or in this case would this be done by the chairman of the parole board?

Mr. KIRKPATRICK: I would think, Mr. Tolmie, that the applicant should apply by letter, as he now does, and that then, as is now done, the chairman of the parole board and the executive director of the parole service would conduct the necessary enquiries.

Mr. TOLMIE: This, of course, brings up the whole question of concealment of the conviction. In other words, many people who have convictions have been able to conceal this fact from their family and from their employer, and I think there is grave danger when the person applies. It would, of course, necessitate an investigation which might very well reveal the fact that the person had been convicted. Perhaps officers would have to attend at the home and neighbours might even be questioned. I do not know exactly what type of investigation would be entailed. I think, and this is the main criticism of this type of application, that in a sense it destroys the purpose of the bill. As I say, con-

ceivably it could make known the conviction to fellow employees and, as I say, the family. This is so. I believe that many people would not apply.

Mr. KIRKPATRICK: I am assured, Mr. Tolmie, that in actual fact these enquiries are conducted in a most discreet manner, and that there has been no problem to date in regard to the revelation of the criminal record to associates or employers. This, of course, has been the experience to date, and undoubtedly if there were a much freer use of the pardon, it is possible that this could happen. But, in the over-all advantages of the use of the pardon, I think you would have to have some form of application. Many of these men that we deal with are transient and mobile and no one would have their addresses, so how could any central authority write to them and say: "You have been pardoned."

Mr. TOLMIE: By the same token, if they are transient people and have various addresses—

Mr. KIRKPATRICK: I should have said mobile rather than transient.

Mr. TOLMIE: Would they not also be the type of people who perhaps would not apply because they would not be aware of the new change.

Mr. KIRKPATRICK: I think, if the system was inaugurated, that the word would get around very very fast. There is no problem spreading information in the prisons, and men in the prisons would know that this was a possibility and would look forward to that eventuality. Then men who were on parole, had been paroled, or had come to services such as ours, could be informed that in due course they would have the right to apply for pardon. I think there would be no problem of men not knowing.

Mr. TOLMIE: Would there not be the problem, however, of certain people perhaps having had a very minor conviction when they were 16 or 17 and because they are now 45 or 50 they have actually forgotten about it, so they apply for a position, stating that they have no conviction because they really believe they do not have. This may be hard to believe but I think it could possibly happen. Then, once it is revealed, it would be too late to get the pardon because the damage would be done.

Mr. KIRKPATRICK: That is right.

Mr. TOLMIE: Then how can you stop it? The only way you could stop it is by having it automatically without application.

Mr. KIRKPATRICK: But, you see, you are assuming that the only record that is known about the individual is the one at the FPS section at the RCMP. No matter how you expunge those records, the record still remains in his community; the private investigation firms have it, neighbours have it, agencies have it, the police have it. As a matter of fact, according to the Identification of Criminals Act, the RCMP would not reveal a record to a private enquiry; it would only reveal a record to another police force for purposes of law enforcement. So it is not from the RCMP, I am quite sure, that the record is made available to private agencies of various kinds.

Mr. TOLMIE: Just let me ask one more question. You recited some letters there, I have also received a number of letters, which are anonymous. Do you really think that those people, if this Bill or a similar one becomes law, where you have to apply, that they would actually apply? They have already shown

their feeling that they want it concealed. They do not want to even cast one doubt upon their standing in the neighbourhood.

Mr. KIRKPATRICK: I do not see any other practical way of doing it but by application. If you are going to suggest automatically expunging records at the end of a certain date, how does the person know that this in fact has been done, and how does he get the right, just by the expunging of the record, to answer "No" to a criminal conviction. You have to get this wording in here: "shall be deemed not to have had a criminal conviction.", and this can only come through the pardon process.

Mr. TOLMIE: Yes.

Mr. KIRKPATRICK: So it has to be individual and selective, as I see it.

Mr. TOLMIE: Yes, I think this is the main cleavage of opinion. One is legislative, automatic expunging, and frankly, this has not been in vogue in many countries that I know of. The other is a judicial expunging, which is upon application.

Mr. KIRKPATRICK: That does not necessarily mean that on application is judicial. I am not advocating that; I certainly do not advocate the use of courts in this matter, because I do think then you would have inevitable exposure and publicity in many cases. So, as mentioned in my brief, I am not in favour of the use of courts. I am in favour of extending the use of the present system. I do not know how many ordinary pardons or conditional pardons are granted in a year. I would not think there would be very many at the present time. But, if this were considerably expanded and the necessary staff provided in that particular section of the parole service then, I think, it becomes a very practical manner, and it enbales them, by the use of pardon, and the use of the words which you have used, which I heartily endorse: "shall be deemed not to have a conviction," then it enables a man to say: "No," on an employment application form. This is the important thing you want to get.

Mr. TOLMIE: Would it be possible for the pardoning authority to initiate the correspondence with the person accused of the offence?

Mr. KIRKPATRICK: Theoretically, it would be, but, in practice, how would they know how to find him?

Mr. TOLMIE: I would think the ones that perhaps would be seeking this type of relief would be well integrated into society and in a good position. These are the type of people we really want to help, and I do not think it would be too great a problem. It is a matter of whether they initiated the one who wants relief, or whether it is initiated from the—

Mr. KIRKPATRICK: Of course, as these letters indicated, certainly the one from Mr. B., who called us several times on the telephone before revealing his name, these men, after they have been released from prison, seek an anonymity; they do not want anything to do with their past experience, or their past associates, and even we lose track of them after they have been through our service. We get a Christmas card, often anonymously; someone will be passing through and we get a telephone call saying: "I am still out; how are you; thank you very much." But, we do not know where they live. I do not know how it would be practical for the Government parole service to find these people. The

only practical method that I can see is the letter to the parole service requesting consideration for an ordinary pardon.

Mr. TOLMIE: Well, these are the points that have caused me concern. You have been very helpful as far as the actual mechanics are concerned. I do not want to monopolise your time, as there are more witnesses.

The CHAIRMAN: Mr. Street of the parole service will be here on Thursday. Are you through yet, Mr. Tolmie?

Mr. TOLMIE: Yes.

The CHAIRMAN: I have Mr. Wahn, then Mr. Honey, Mr. Ryan and Mr. Gilbert.

Mr. WAHN: Mr. Chairman, would the pardon be automatic upon establishing that there had not been a subsequent offence within five years, or would it depend upon some exercise of discretion?

Mr. KIRKPATRICK: I would suggest that it should be not automatic but selective, based on reasonable proof that the person was, in fact, not living outside the law but unconvicted, that he had removed himself from the criminal fringe, as we call it, and that he was, in fact, living a responsible life. There is a difference between the kind of person that you want to pardon, who may still not have been convicted but really living outside the law. So, I think other factors should pertain, if you would accept that, Mr. Wahn.

Mr. WAHN: Well, if that were done, then of course there would have to be an application; there could not be an automatic expunging of the record, if some discretion is going to be exercised.

Mr. KIRKPATRICK: In my view, that is so. Again, let me stress that it is not just the expunging of the record; the important thing is to get into the pardon the wording that Mr. Tolmie has inserted, namely: "shall not be deemed to have had a conviction."

Mr. WAHN: My next question stresses the importance of that wording. Actually, Mr. Tolmie's wording is: "should be deemed not to have committed the offence for which he was convicted," Would it be equally satisfactory if the wording read: "should not be deemed to have had a conviction." I think there is a slight distinction there. It seems a little odd to say that the man should be deemed not to have committed the act which he did, in fact, commit; it would be a little less anomalous to say that he shall be deemed not to have been convicted.

Mr. KIRKPATRICK: I would favour the latter. I think, since you point out the distinction, which is perhaps more than a narrow distinction, I would tend to favour the word "conviction", Mr. Tolmie, rather than the word "offence." I think this is what the gentleman at the end of the table was asking earlier.

Mr. WAHN: In other words, the conviction is the result of the offence?

Mr. KIRKPATRICK: That is correct.

Mr. WAHN: Am I correct in saying that it would be satisfactory, in your view, if the conviction were an offence?

Mr. KIRKPATRICK: That is right.

Mr. WAHN: Well that is where a free pardon keeps—

Mr. KIRKPATRICK: A free pardon, of course, is an act of grace because, in fact, the person has been found to have been not guilty, and he is morally entitled to that.

Mr. WAHN: You referred, I believe Mr. Kirkpatrick, to some existing section of the Criminal Code, which in effect states that in the event of a pardon, a person is deemed not to have been convicted, or does it mean he is deemed not to have committed the offence?

Mr. KIRKPATRICK: That is section 655, which precedes this Bill, which will be section 655A, and it is therefore part, as I understand it Mr. Tolmie, of the total pardon process. You have linked it to the two sections of 655.

Mr. TOLMIE: Which part?

Mr. KIRKPATRICK: You speak of the foregoing in your bill; so, your bill will come as section 655A following on section 655. In section 655(3) the wording is:

—that person shall be deemed thereafter never to have committed the offence in respect of which the pardon is granted.

Now, that is the free pardon. They do not give any wording for an ordinary pardon.

Mr. WAHN: That wording is consistent with a free pardon because, on the basis of a free pardon, I understand the person, in effect, in actual fact did not commit an offence.

Mr. KIRKPATRICK: That is correct; it was subsequently proved that there was no offence committed.

Mr. WAHN: That is all I have to say, Mr. Chairman.

Mr. HONEY: Mr. Chairman, I have just one question following Mr. Wahn's question. If Mr. Tolmie's bill were amended, Mr. Kirkpatrick, to use the wording that you suggest, "shall be deemed not to have any criminal conviction", would you still then be quite firm in your feeling that there should not be an automatic pardon? In other words, I think the Bill could be amended to overcome the objection or the feeling that you have that it is important to have this wording: "shall be deemed not to have had a criminal conviction." I think the Bill could be amended to achieve that. If that were done, would you still feel that there should not be an automatic pardon after the expiration of the term.

Mr. KIRKPATRICK: Do you mean an automatic pardon or an automatic expunging of records?

Mr. HONEY: Expunging; I am sorry.

Mr. KIRKPATRICK: I think that I would have no particular objection to that, if the records are expunged, provided there is a pardon, which to my mind is the important factor, and if you would not meet strong opposition, which I suspect you would from law enforcement bodies. I have talked to a number of police officers, and I am sure you have, Mr. Tolmie, and I think their feeling about their expunging of records is that this would be undesirable. I do not think it has to happen, if it is moved into a separate pardon section in the RCMP files.

Mr. HONEY: What concerns me is that I do not know what you gain by having a pardon, as you call it, if the legislation says, in effect, that the man shall be deemed not to have had a criminal conviction. Is that not, in fact, a pardon?

What more do we gain by giving a man a piece of paper? I am concerned about the case where a man is leading a good, moral and honest life and has married and all of a sudden the mail arrives one day, his wife opens it up, and it says: "You are now pardoned;" and this is of an offence that she knew nothing about.

Mr. KIRKPATRICK: Would he not get this in an automatic pardon?

Mr. HONEY: I would like your opinion on this. At the end of the period of time—five or ten years or whatever it is—the records are expunged and by process of law he is deemed not to have had a criminal conviction. He is told this when he is in the penitentiary and it becomes generally known so that this man counts the days until five years after the expiration of his sentence and he knows that he has the benefits of this legislation.

Mr. KIRKPATRICK: And you would destroy the records?

Mr. HONEY: No, I would be prepared to have the records set aside in another file.

Mr. KIRKPATRICK: All right. Suppose you do this; then, the man makes application for the job and he comes to the employer and makes the employment application form and he says: "No, I have not had a criminal conviction", and then he is called in. How does he prove that he has in fact had a pardon? He has nothing to show.

Mr. HONEY: He says: "I have not had a criminal conviction." The employer does not go any further than that.

Mr. KIRKPATRICK: But what if the employer turns up the fact that he has had a criminal conviction?

Mr. HONEY: The employer says that someone has told him about the criminal conviction?

Mr. KIRKPATRICK: The bonding company or someone.

Mr. HONEY: The man concerned could then reply: "Mr. Employer, this is the Tolmie bill which was passed in 1967 and under the provisions of that bill, as a matter of law, I am deemed not to have had that conviction." I think your suggestion of complementary legislation—provincial legislation—and the right to work theme could then protect him because he should have the protection of this law.

Mr. KIRKPATRICK: It is a most intricate business, I admit, and my own view, which you asked for, is that it would be better to have the actual application for pardon—a selective process, as Mr. Wahn indicated—which determines more than that he just has not been convicted again. He may still be living a non-law-abiding life but not have been convicted and the police may know that this man is right on the criminal fringe. If you automatically expunge his record and grant him pardon I do not think this would be very satisfactory.

Mr. HONEY: Thank you. I wanted your opinion and I have it. I will not take any further time.

Mr. WAHN: Perhaps the basic question is whether it is to be selective or automatic.

Mr. KIRKPATRICK: I think it should be on application and subject to careful, discreet investigation by the authorities who know how to do this. These authorities are the parole service with the chairman of the parole board, of course.

Mr. RYAN: Mr. Chairman, Mr. Wahn has pretty well cleared up with Mr. Kirkpatrick what I had in mind. I was as concerned as he was with the wording and with cases of crimes of violence and sexual offences because these kinds of cases are notorious for being repeated.

Mr. KIRKPATRICK: May I speak on that point, Mr. Ryan, although you were not asking a question?

The young offender today is by no means a first offender. A high proportion—about 45 per cent—of the men in our penitentiaries today are under 24 years of age. Crime is becoming increasingly a young man's business and many of these crimes are violent ones, as can be determined by the study of the Dominion Bureau of Statistics criminal statistics section.

We must not assume that because the person is under 21 he is not necessarily a very difficult person. Indeed he might be more dangerous than many older men.

I think most police officers would rather deal with a middle-aged man than with a young offender because of the attitude to authority which is being exhibited by so many young offenders these days. We have found that as men approach middle age there is a lessening, as there is in all of us, of energies and a desire to settle down and realization of total misspending of life. I am a little passed middle age—I understand your laughter. They have a lessening of energies and a realization of misspending of life.

Many of these men, even though they may have been guilty of serious offences when they were young, are just as good bets for pardons as the young offenders may be. It is often felt, for example, that the murderer is the most serious of all risks to be released. But, in actual fact, the murderer—the homicide—has the best rate of recovery in the community following release. I am assuming that he has been commuted from death, of course, or that his offense was non-capital murder. The record is the best of all parole and non-parole release records.

A recent study was done in the penitentiaries of assaults in the Canadian penitentiaries. It has just been reported. There were two deaths; one of an officer and one of an inmate, since 1945—ten years since 1945—and both of those were committed by men who had been convicted of offences other than murder or homicide, so that the homicide does not tend to repeat even other offences apart from homicide. The sexual offender—this is something which I think would require different considerations. But I can think right now of three men who had been involved in such cases. One appeared in the newspaper not too long ago for a most laudable purpose. I will not reveal anything further. Another whom I know is now a top man in a personnel department. A third man wrote me from a distant part of Canada recently and is active in business. They were all sex offenders.

Mr. RYAN: The case of Red Ryan who is no relation of mine, was extremely exceptional.

Mr. KIRKPATRICK: Of course, Red Ryan is the ghost which has haunted the parole service of Canada and all efforts to provide constructive rehabilitative

measures in our prisons and following prison. The Dion case in Quebec was another tragic situation. These things will always happen. I think that if there had been the selective provisions that we are suggesting today, and perhaps a five year gap, if that would be your judgment even these would not have been pardoned.

Mr. RYAN: Another thing: We have had so many examples recently in the news of whole chains of sexual offences in the United States as well as in Canada—probably more so in the United States that it would seem to me necessary that a review be given—

Mr. KIRKPATRICK: Do you mean by disturbed people?

Mr. RYAN: Yes. I suppose rape artists are disturbed. Do you mean mentally disturbed or disturbed chemically?

Mr. KIRKPATRICK: I think you have to qualify the imputation regarding rape. Rape per se tends to be an aggressive, hostile offence channelled sexually rather than what we call a sexual offence except where you notice a great disparity in the ages of the parties involved—a youth of 18 who rapes an elderly woman or where you notice sadism accompanying this or repetitious—

Mr. RYAN: That is more of a murder-rape combination than a sexual offence.

Mr. KIRKPATRICK: Yes. These three things, if they accompany rape, indicate a disturbed person and this person, with respect, should be proceeded against under the dangerous sexual offender section of the Criminal Code. I cannot recall the section offhand.

Mr. RYAN: What would the likelihood be of his being convicted once of rape and then having no record for five years—it would go undiscovered for five years—

Mr. KIRKPATRICK: This again, you see, is why I am in agreement with the suggestion of Mr. Wahn that it would be desirable to have a selective investigation which I am sure includes police reporting. I am sure that the present investigation for ordinary crimes would include a report from the local police officers who would know whether they do suspect this man of engaging in further criminal activity of various kinds. I think the methods which have been suggested here today give the maximum protection for the public, which is what we are all concerned about, as well as the maximum opportunity for the individual, which we are also concerned about.

Mr. RYAN: I agree with that wholeheartedly.

Mr. GILBERT: Mr. Chairman you are looking at the clock so my questions will be very short.

First of all, Mr. Kirkpatrick, like our opinion with regard to uniformity of legislation concerning the Juvenile Delinquents Act. Here we have disparity between the provinces concerning the age of offenders, and that may be a first approach with regard to this problem. You find that young fellows of the age of 16 in Ontario are convicted of offences. If they are committed in, say, Saskatchewan or Manitoba—

Mr. KIRKPATRICK: Across the river in Hull, it would be 18.

Mr. GILBERT: This would be one approach which it seems to me would be very necessary with regard to this general problem.

Mr. KIRKPATRICK: With respect, I am in complete agreement with the principle of unanimity of age across the provinces. It is very difficult to bring this about because all the correctional services are set up in their provinces in relation to the present ages and something has to give either way. There has to be some compromise. We have suggested the age 16 because we find, as I mentioned before, that many very serious offences are being committed by people of 16 and 17 years of age who perhaps should have the advantages of the adult court as well as some of the disadvantages of the adult court. But, in regard to the criminal records of juvenile delinquents, it might be interesting to mention the recommendation of the Report of the Ontario Legislature's Select Committee on Youth known as the Syl Apps Report in which they say:

The expunging of juvenile records after five delinquent-free years would be a positive step in correcting this situation. It would permit a young man or woman to answer the many queries respecting their private lives and background (and which have a direct bearing on their eligibility for job employment opportunities) in an honest and straightforward manner. One supported by law. As it is now, many fine young persons are frustrated, confused and embittered by the reactions of some employers when they learn of a potential employee's past juvenile record.

Their recommendation 249 on page 273 of the report states:

249. Under no circumstances should juvenile records be revealed to any business agencies for the use of employer, personnel or credit purposes. That any persons using such information for any such purposes should be punishable by law.

Section 250 states:

250. Juvenile records be expunged after five years of delinquent-free behaviour.

Mr. GILBERT: Mr. Chairman, I agree with Mr. Kirkpatrick that the procedure should be an application to the parole board and a review made by the parole board.

Mr. KIRKPATRICK: Not by the total board, sir.

Mr. GILBERT: I am sorry. That the application be processed.

Mr. KIRKPATRICK: That is correct.

Mr. GILBERT: One of the things I have experienced is the hostility of many recidivists towards the parole board. They may have had an application rejected and so forth. I was just wondering if it would be wise to permit an appeal from the parole board to the courts if there has been a rejection of the application. What do you think of that? Your society deals with these men and I am just speaking from personal experience but there appears to be this hostility. It may be that they feel they are being done by by certain officers of the parole board.

Mr. KIRKPATRICK: That is a very astute question and I find it difficult to answer. Of course, if the person wanted to appeal it he would be risking the

publicity that would come from that. I would perhaps have more faith in the integrity of the executive director and chairman of the parole board than some people might have. I think if their officers, in the course of their inquiries, were not satisfied at that time, the matter could always be reviewed again by the parole board year by year or within a reasonable time for other considerations. I do not like the court procedure in this particular regard.

The CHAIRMAN: Mr. MacEwan, do you have any questions?

Mr. MACEWAN: Mr. Kirkpatrick, do you believe that the five-year rule should apply to both minors, those under 21, and to those over 21?

Mr. KIRKPATRICK: Yes, sir.

Mr. MACEWAN: Thank you.

Mr. KIRKPATRICK: Following what was said earlier, the serving of the particular sentence—the conclusion of the particular sentence, be it probation or imprisonment, and, I would agree with you, Mr. Tolmie, that it should run from the time of the commencement of parole provided that, of course, has been crime free. I think your point was appropriate there.

Mr. TOLMIE: Just one last point. You mentioned that you would not necessarily advocate the expunging of the record. Let us assume for a moment that the five-year period had elapsed and according to this bill, or a similar bill, he is deemed not to have been convicted of the offence. Then he is charged three or four years later and convicted. Would the sentencing magistrate or judge take into consideration the original conviction to determine the sentence?

Mr. KIRKPATRICK: I would not think he would know about it.

Mr. TOLMIE: Then why could not the record be expunged?

Mr. KIRKPATRICK: Because I think the police would probably want to reactivate that record. When I say that I do not think he would know about it—he probably would know about it through the local police department because they have very long memories in this regard.

Mr. TOLMIE: But informally they send in for the records. Would it not come back that there was no record and he would be treated as a first offender?

Mr. KIRKPATRICK: I would think so. That is a very interesting point but I would think that this is the process that should happen, Mr. Tolmie. I would agree that that should happen, the man should start again. If he has been pardoned he should start again as far as record was concerned, with the exception that following conviction the police would undoubtedly want to reactivate that record.

Mr. GILBERT: Mr. Chairman, I have just one final question. With regard to those records, what you are indicating is that if the application is successful then the record goes to the inactive file.

Mr. KIRKPATRICK: To a pardoned file.

Mr. GILBERT: To a pardoned file? The accused, the offender still knows that it is in there. Do you think that after it goes into the inactive file, the pardoned file, after a period of 10 years it should be expunged?

Mr. KIRKPATRICK: I do not particularly object to the expunging. I do not think that is enough and I do not think it is necessary and I think it will meet with police opposition—serious police opposition. It is not that I am against the expunging, but I am trying to find a way in which law enforcement people will be happy about this bill. I know many police officers who would be happy about the bill provided it did not call for what they treasure in *modus operandi* and other aspects of law enforcement; namely, the criminal record of the individual they are dealing with. I was trying to find for you some kind of solution which would accomplish this. But I have no objection to the expunging of the record *per se*.

The CHAIRMAN: Thank you very much indeed, Kirkpatrick. We listened with a great deal of interest and attention to your presentation. It was very clear and very informative. On behalf of the Committee I wish to extend to you our very sincere appreciation for your attendance here this morning.

Our witness on Thursday is Mr. Street, Chairman of the National Parole Board. The meeting is adjourned.

**OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE**

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

First Session—Twenty-seventh Parliament
1966-67

STANDING COMMITTEE

ON

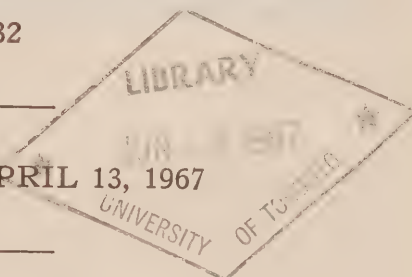
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 32

THURSDAY, APRIL 13, 1967



Respecting the subject-matter of
Bill C-192, An Act to Amend the Criminal Code
(Destruction of Criminal Records)

WITNESS:

From the National Parole Board: Mr. George Street, Chairman

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (High Park)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,	Mr. Honey,	Mr. Otto,
Mr. Aiken,	Mr. Latulippe,	Mr. Pugh,
Mr. Cantin,	Mr. MacEwan,	Mr. Ryan,
Mr. Choquette,	¹ Mr. Mandziuk,	Mr. Tolmie,
Mr. Gilbert,	Mr. Mather,	Mr. Wahn,
Mr. Goyer,	Mr. McQuaid,	Mr. Whelan,
Mr. Grafftey,	Mr. Nielsen,	Mr. Woolliams—24.
Mr. Guay,		

(Quorum 10)

¹Replaced Mr. Fulton, Wednesday, April 12, 1967.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

WEDNESDAY, April 12, 1967.

Ordered,—That the name of Mr. Mandziuk be substituted for that of Mr. Multon on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

THURSDAY, April 13, 1967.

(43)

The Standing Committee on Justice and Legal Affairs met this day at 11.25 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Forest, Gilbert, Goyer, Guay, Honey, Mandziuk, MacEwan, Mather, Tolmie, Wahn, Whelan (15).

In attendance: From the National Parole Board: Mr. George Street, Chairman.

The Chairman asked that the press withdraw and the Committee go *in camera*.

On motion of Mr. Whelan, seconded by Mr. MacEwan,

Resolved,—That reasonable living and travelling expenses be paid to the Chairman and the Clerk of the Committee in order that they may escort Lord Parker to and from Montreal Wednesday, May 3, 1967.

At 11.30 a.m. the Chairman opened the meeting to the press and the public, and introduced Mr. George Street, Chairman of the National Parole Board.

Mr. Street made a statement re Bill C-192, following which he was questioned by the Committee.

Agreed,—That Mr. Street provide the Committee with enough copies of *Canada's Parole System* to distribute to the Members.

Following a discussion of the operation of the Parole Board, it was

Agreed,—That the Chairman seek to find a way to bring the operations of the National Parole Board, before the Committee.

At the end of the questioning, the Chairman thanked Mr. Street for taking the time to come before the Committee.

At 1.10 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

THURSDAY, April 13, 1967.

(Meeting opened in camera)

The CHAIRMAN: Gentlemen, we will now continue with our regular meeting.

Mr. Street is known personally to most of the Members of the Committee. I must admit that this is my first personal meeting with him. I have communicated with him on many occasions on behalf of people from the High Park riding who were languishing in jail and who were trying to get their parole period shortened, and so on. I think we have always found Mr. Street—I know I have—to be very co-operative and very helpful, within the limits of what he could or could not do on behalf of people who have had to obtain their parole under his chairmanship.

He is accompanied by Mr. Lacasse, the Clemency Officer. Without further ado, I will ask Mr. Street to make his presentation. I think you all have a copy of the brief. If you do not have a copy, they are available here. These are the briefs, are they not?

The CLERK of the COMMITTEE: No, they are not.

The CHAIRMAN: Where are the briefs?

Mr. GEORGE STREET (*Chairman, National Parole Board*): I have five copies. The clerk asked me to bring five copies.

An hon. MEMBER: Are you going to read your statement, Mr. Street?

The CHAIRMAN: Here they are. I will qualify my statement. There are five copies of the brief available. Mr. Street.

Mr. STREET: Thank you, Mr. Chairman.

Mr. Chairman and gentlemen. I will read this statement, if you like, and then, if you wish to discuss any features of it, or ask any questions, I will be very glad to try to answer them.

I wholeheartedly agree that there should be some relief from the embarrassment and stigma of a criminal record provided for a person who has been convicted of an offence, and who is completely rehabilitated and is leading a normal, law-abiding life. This is especially so in the case of a person who has committed only one offence and where a substantial period of time has elapsed since he finished serving the sentence for that offence.

There should also be some relief provided for a person who has committed more than one offence but who since serving the sentence imposed upon him as a result of the last offence, has become completely rehabilitated and has established a good reputation in the community and also is leading a useful law-abiding life.

I do not think such relief should be extended to a recidivist or a person, although he may not have committed any offences for some time, is perhaps a criminal or is living on the marginal edge of a criminal life—or whose conduct is such that he does not deserve any special consideration.

I believe that any form of relief provided should not be given automatically but only if the applicant deserves it, because of his general reputation, habits and mode of living.

The proposed Section 655 A (1) of this bill provides for the expunging of a record automatically after a period of 12 years in which a person has not been convicted of a further offence. I respectfully suggest that in some cases 12 years is too long a period and in other cases may not be long enough.

I am informed by the R.C.M. Police Identification Branch that a random check of about 200 files revealed over 30 cases of persons who had several offences, but there were more than 12 years between some of these offences. One of these was the case of a sex offender who had previously committed six offences, the one more than 12 years previous to the one for which he was apprehended. He was then convicted as a dangerous sexual offender and, as you know, was sentenced, in effect, to a term of life imprisonment.

If Section 655 A (1) had been in effect, his previous convictions would not have been known and this might have meant that he would not have been convicted as a dangerous sexual offender, which he no doubt deserved.

I believe it is important to keep in mind the question of protection of the public generally, while considering the rights of individuals. In this connection it is rather important for a court to know all about the person being convicted and if he has any past convictions, even though they may be several years previous. This could be very important in deciding on an appropriate form of sentence or treatment.

I am especially concerned about the provisions of Section 655 A (2) of this bill. With the greatest respect, I suggest that it is too liberal and that we should not automatically erase a record of conviction for no other reason than that the person involved has become 21 years of age. My reasons for this gentlemen, are as follows:

1. The person may not deserve it because of his character and reputation, or because he may either still be a criminal, or be living very close to a criminal life;

2. Naturally there is a great deal of sympathy with respect to youthful offenders. However, at the same time I think we should remember that most of the crime in the country is committed by youthful offenders and they should not be relieved of the embarrassment or stigma caused by a criminal record until it is apparent that they are rehabilitated and have forsaken all criminal activities, apparently forever;

3. The age group between 16 and 24 comprises only 20 per cent of the adult population in Canada, but this age group is responsible for at least 52 per cent of the crimes committed; which is the last year for which I have these statistics;

4. In 1964, which is the last year for which I have these statistics, there were 583 persons admitted to penitentiaries who were 19 years of age or younger and there were 1149 admitted in that year who were between 20 to 24 years of age. What would happen to a man who became

21 while he was in prison serving his sentence? According to this section he is deemed not to have committed the offence, yet he may have two or three or more years to serve as a result of his conviction for that offence.

5. According to subsection (2) a man could have committed a serious offence such as breaking and entry, or attempted rape when he was 20, and also have any number of previous convictions, and when he was 21 his record would be destroyed, even though there would be no indication that he had become rehabilitated or intended to lead a law-abiding life.

6. Over 50 per cent of the crime in this country is not detected and most of the undetected crime is no doubt being committed by those persons who have a criminal record. However, a man could be a criminal and just because he has not been caught, he would get a clear record, although he might have committed several other offences, for which he was not apprehended.

7. A person might have committed an offence at the age of 19 and when he was 21 he might be facing a charge for a further offence, but if his previous record were destroyed then he would have to be treated as a first offender, when he was not, in fact, a first offender.

Therefore, I suggest that subsection (2) is going too far and would be erasing a record for many persons who do not deserve it.

Even if as an alternative, it provided that in the case of youthful offenders, the record might be destroyed after five years or upon attaining the age of 25, there would still be persons obtaining a clear record who do not deserve it.

Therefore, I believe that records should not be expunged automatically but only if after a careful investigation it appears that the person is leading a law-abiding life and has a good reputation and therefore deserves it.

Subsection (4) of the proposed bill provides for the destruction of records and files dealing with such persons who are granted this relief. It would be very serious for the Parole Board, for example, to have to destroy previous files, because we often have to refer to previous files, which give a great deal of useful information about a person, although he may not have committed an offence for a long time.

If this Committee agrees that records of criminal convictions should not be destroyed automatically in all cases, but only if the person seems to deserve it, then the question is, how should this be decided.

It is suggested in the draft bill that it should be decided by a court. This idea has a great deal of merit except that I am afraid it might place a rather undue strain on the courts, whose facilities are already, in many cases, overburdened at the present time. Apart from this, unless there was legislation setting out the principles involved very clearly, there would not be any uniform policy across the country. Even with the general principles set out in legislation, it would be difficult to achieve much uniformity in the application of these principles.

Apart from that, presumably such applications should be heard *in camera*, to avoid publicity for the applicant. Even if this were done, it would be impossible to avoid completely some publicity which could be harmful to the applicant.

This, of course, is the very thing that you are trying to achieve, that is, the avoidance of any undue publicity.

Another alternative is to consider applications for destruction of records, in the same manner as we presently consider applications for the granting of an ordinary pardon. In these cases we make a rather extensive investigation of the circumstances of the offence and the applicant's reputation in the community, and we also obtain the views of the police, judge or magistrate and the attorney general of the province concerned.

If it were decided to have investigations in this manner, it would, of course, add very substantially to our work and we would require additional staff, as would the R.C.M. Police, who make many of these investigations for us.

There are two main reasons, gentlemen, why persons are embarrassed by a previous criminal record. One is because they cannot easily obtain a bond and there are many forms of employment where a bond is required. This, of course, is a matter of the policy of the insurance companies and it is doubtful just how much could be done to overcome this problem. It would be difficult to tell insurance companies in effect how to conduct their business. On the other hand, apparently provincial legislation provides for insurance companies to give bonds to certain high risk drivers on an assigned risk basis.

The other main reason that persons want to have a criminal record expunged is because they want to go to the United States to live and work and they cannot obtain a visa. In such cases, even the granting of an ordinary pardon, which is an extraordinary measure of clemency under the Royal Prerogative of Mercy, is not of much use and the American authorities will not accept it.

Even if Section 655 A (2) were passed in its proposed form, and a record were destroyed, this still would not provide any relief to persons applying for a visa because the immigration authorities would still enquire whether the applicant has—

- ever been arrested for, charged with, indicted for, or convicted of, a crime or other offence;
- whether ever been confined in a civilian prison or jail or a military prison or jail;
- whether he has ever been engaged in illicit buying, selling or handling of narcotic drugs;
- or if he has ever been the beneficiary of a pardon, amnesty, rehabilitation decree, or other act of clemency or similar action.

Mr. AIKEN: Excuse me, could I raise a point?

Mr. STREET: Certainly.

Mr. AIKEN: These are extracts, I take it, from the American visa regulations?

Mr. STREET: Yes, they are, Mr. Aiken. I do have them, but I thought I could summarize them. If he took a chance and answered 'no' to these questions because he knew there was no official record of his conviction, because of it having been destroyed, he would be committing perjury for which he might be prosecuted at almost any time. Therefore, it appears that whether a person's record is destroyed or even if he is granted a pardon, he could not obtain a visa to enter the United States. As I say, this is one of the main reasons why we get requests for pardons.

I believe that if provision is made for the destruction of records, that they should be kept in a secret inactive file, available only to certain restricted sources.

such as the Solicitor General's Department or the Department of Justice. The Parole Board would have need of previous files if a person reverts to crime again and this would be especially important in the case of sex offenders who might be dangerous.

I suggest that if this were done and a person's record were erased for all official purposes and placed in an inactive file if he committed another offence again, his previous record should be reactivated, at least for certain specified purposes.

In connection with the general problem of destroying records, it would be necessary for the Identification Branch of the R.C.M. Police to destroy their records and also the local police force who prosecuted the person for the offence, which force is under provincial or municipal control.

Then there is the question of records which may have been produced in court proceedings for any purpose and these have become public documents. It would be necessary then to ensure complete absence of publicity of a record of conviction which had become part of a court's record, that all police and court records should be removed and this would be cumbersome, to say the least. Again, the administration of justice and the conduct of courts are, as you know, under provincial control.

Part of the embarrassment caused by criminal records is because they are apparently available to certain unauthorized persons such as credit unions, merchants and employers. The R. C. M. Police do not reveal a criminal record to anyone other than an authorized police force. But somehow these unauthorized people obtain criminal records and apparently fairly easily.

Another problem is that application forms for employment quite often include the question "have you ever been convicted of a criminal offence?" Perhaps it should read "Have you ever been convicted of a criminal offence for which you have not been granted a pardon?"

Therefore, for the reasons mentioned, I respectfully recommend that the erasing of records should be done by the granting of an ordinary pardon or by some other certificate of rehabilitation, but only after a careful investigation indicates that the person concerned deserves it.

Thank you, gentlemen.

Mr. AIKEN: Mr. Chairman, I have just a couple of questions and the first thing I have to say is more of a comment. I take it that the best thing to do is to stay out of trouble if you want to have a crime-free record? Is this your conclusion, Mr. Street?

Mr. STREET: Yes.

Mr. AIKEN: Or, if a citizen has been charged with an offence, he should make sure he is well represented by legal counsel so that if he is innocent, or if he has good and just cause why he should not be convicted, he will get the benefit of the doubt from a judge or magistrate?

Mr. STREET: There is no doubt about that. In Ontario that will be a lot easier from now on, will it not?

Mr. AIKEN: This leads me to my next question. Do you think that perhaps the extension of a legal aid system will help to eliminate some of these cases which appear—in retrospect, anyway—to have been unjust or unfair and will give these people a better chance for acquittal?

Mr. STREET: I honestly do not think, Mr. Chairman, that very many, if any, people are convicted improperly in Canada and that the provision of an extensive legal aid system might result in fewer people being convicted because more would be discharged for some reason or other. I do not think many are being convicted improperly. If a person pleads guilty to an offence, as do about 75 per cent of people in court as most of you people know, I think it is fair to assume that he probably is guilty.

I do not know if that is what you were asking me, Mr. Aiken.

Mr. AIKEN: Yes; it is along that line. There is one other line of questioning I would like to take, dealing with procedures.

I suggested at a previous hearing that the only really effective way of dealing with all the problems that you have raised is by a delayed appeal procedure, either for cases where the erasing of the record appears proper or should be done automatically, and this was that after a person has been convicted and has committed no further offence for a great number of years, and otherwise appears eligible, an appeal could be entered for him on the ground that he was not a criminal type of person in the first place, and that the appeal should be allowed, without a time limit on it.

My reason for this is that in all the cases that you mention today the person could properly answer "No", because he has then become a person who has appealed his conviction and been allowed it. I suggested this as a technical procedure for proper cases rather than an erasure of the records. Do you have any comment on that?

Mr. STREET: No; I would agree with that. It is just a matter of whether you want it done by a court or by some other means. As I mentioned in my remarks, I agree with the idea that a person can, after a suitable period of time, obtain a clear record if he deserves it. This is the only qualification. If he is no good then I do not think he deserves it; but if he has re-established himself, has a good reputation, and so on, I think he deserves it and should get it. This is some incentive to people who want to earn a pardon, or a clear record.

Mr. AIKEN: You think that every case should be considered on its merits, rather than by an automatic procedure such as is suggested in the bill?

Mr. STREET: Yes; because I know that there are a great many people who just simply do not deserve this relief and who, even though they may not be apprehended, by their conduct and way of living make it fairly easy to assume that they are committing offences. In any event, their conduct is such that I suggest that they do not deserve any special consideration. But if they do deserve it I think there should certainly be some provision for this relief.

Mr. AIKEN: How could you identify a person who is not living a decent, law-abiding life if he has not been convicted of any subsequent offences?

Mr. STREET: Our investigation might show that he is associating with known criminals; or that he is not working at any job or that he does not have stable employment, or is not looking after his wife and family; he may be addicted to alcohol and be causing his wife and children a lot of trouble; and his whole conduct is such that you could not have much sympathy for him. Sometimes we get these cases.

Mr. AIKEN: This would be evidence from a person who investigated the facts of the individual?

Mr. STREET: Yes, sir; when we do an investigation for an ordinary pardon we have an investigation like this and we know all about him—his previous history and what he is doing; what his reputation is; his work record; how he accepts his responsibilities; if he pays his debts, and so on; if he has debts, and things like that.

Mr. AIKEN: Do you think that it would be a practical possibility for each case to be investigated? You said that it would entail considerably more staff. Would it really be an almost impossible situation if there were a large number of applications?

Mr. STREET: It would entail very extensive work, all right, I have indicated. I do not know how many people would apply for it—it is hard to estimate that—but I think that there would be a lot of work involved. I think there should be an investigation according to each individual case rather than just arbitrarily doing it after 12 years, or when he becomes 21. In some cases it is done after five years, if he deserves it.

Mr. AIKEN: Thank you.

The CHAIRMAN: May I ask you a question, Mr. Aiken? In your theory of delayed appeal would the onus be on the person applying to present reasonable evidence to the court of appeal that he had lived a normal and useful life, based on statements from responsible people in the community such as a minister, a doctor or leading businessman? Would he have that onus?

Mr. AIKEN: No, that would not be my proposal, Mr. Chairman. My proposal would be that after the required number of years had passed the person could make an application which would be automatically granted unless there were evidence presented against him.

The CHAIRMAN: In other words, you would accept it as *prima facie* that he was entitled to it?

Mr. AIKEN: Yes; and that in such a case there could be an appeal and the original conviction reversed.

Mr. STREET: It would be the duty of the crown attorney, then, to enter an appeal against the application, if he saw fit to do so?

Mr. AIKEN: I would assume that.

(Translation)

Mr. CHOQUETTE: Mr. Street, the enquiry on justice taking place in Montreal has heard many witnesses, including Mr. Robert, the chief of the Provincial Police, who complains that the National Parole Board is a little too lenient in the way it grants paroles. Do you share Mr. Robert's opinion?

Mr. STREET: Not at all, sir. I have read the newspaper article in which Mr. Robert's comments appeared, but I do not agree with his comments to the effect that we grant paroles to one out of four applicants. In the first eight years of its existence, the Parole Board granted approximately 18,000 paroles, and during that time we had to return only 1,900 of those paroled to prison.

Mr. CHOQUETTE: That is more than 10 per cent.

Mr. STREET: More than 10 per cent, yes.

Mr. CHOQUETTE: Do you consider this a high percentage?

Mr. STREET: No, not at all. It must be admitted that we have been successful in approximately 90 per cent of the cases.

Mr. CHOQUETTE: But, Mr. Street, if you parole 90 per cent who are not recidivists, you must consider the nature of their offence. The 18,000 granted parole are not necessarily 18,000 habitual criminals?

Mr. STREET: No.

Mr. CHOQUETTE: They might be persons who have committed only one minor offence and in such cases parole is justified. But I think that if more than 10 per cent are recidivists, there is cause for concern. I find it concerning, don't you?

Mr. STREET: Yes, but of all the prisoners who are paroled, almost 90 per cent of them finish their parole without committing any further offence and returning to prison. This is a very high rate of success; the highest in the world.

Mr. CHOQUETTE: Eighteen thousand. Is this published in any report?

Mr. STREET: Yes.

Mr. CHOQUETTE: The report of what year?

Mr. STREET: We publish an annual report and the one I have here is for 1965.

Mr. CHOQUETTE: 1965. And this is 18,000 over a period of 18 years; 10 per cent returned to prison?

Mr. STREET: Yes. Of the 1,900 who returned to prison during their parole, half returned because they failed to live up to the conditions of their parole, and the other half because they committed other offences.

Mr. CHOQUETTE: In the case of the 1,900 who returned, have any second paroles yet been granted?

Mr. STREET: This is possible, but not probable. It is possible but it has not occurred often. It is possible that after obtaining a parole—

Mr. CHOQUETTE: You do not have any information with you at the present time to the effect that more than one parole has ever been granted to the same offender?

Mr. STREET: To the same—?

Mr. CHOQUETTE: To the recidivist? What I mean is: Have you ever had occasion to grant a second parole, and have you any statistics to substantiate this?

Mr. STREET: I do not believe so sir, I do not know.

(English)

Mr. TOLMIE: I do not think that we should be questioning the witness on these matters. He came here to discuss this bill. I do not think that he has the information available, which makes this gentleman out of order.

(Translation)

Mr. CHOQUETTE: Mr. Chairman, it is important to learn whether the Board is functioning well before we decide to destroy the files. I feel that it closely relates, Mr. Chairman, and that if an enquiry is taking place in Montreal and the chief of the police force, Mr. Robert, a responsible man, states, while appearing as a witness, that the Parole Board is not functioning well this is cause for concern. This is especially so in 1967, the year of Expo; and when we know that the underworld is organized in a dangerous way, I think there is some relationship.

(English)

The CHAIRMAN: Mr. Choquette, I think Mr. Tolmie's point was about the principle of the bill. Although you have been bringing out some very interesting information, which will be of benefit to the Committee, I think Mr. Tolmie was hoping that we could get on with discussing the expunging of criminal records rather than the question of parole, or whether parole is working out satisfactorily. You may continue your questions along those lines if you wish, because it is valuable information.

(Translation)

Mr. STREET: I do not think, sir, that we have accurate statistics on the number of people who have been granted a second parole, but I will be pleased to try to obtain any such statistics. It is possible to obtain a second parole, but this does not happen very often.

Mr. CHOQUETTE: Mr. Street, is it possible for you to summarize the actual procedure, not the formalities that have to be observed, but the actual procedure leading to parole? Is it a letter from the M.P., from the parish priest or from the Crown Attorney?

Mr. STREET: We have a book which describes in detail the procedure and policy of the Parole Board in granting paroles. We have a copy here in English, but I could get one for you in French if you like.

Mr. CHOQUETTE: What is the title of this book?

Mr. STREET: Canada's Parole System.

(English)

The CHAIRMAN: Mr. Street may be able to get copies for the Committee. Would that be possible?

Mr. STREET: Oh, certainly, yes.

The CHAIRMAN: Will you see that it is distributed so that each member of the Committee will have it?

Mr. CHOQUETTE: Does the Committee agree that Mr. Tolmie should do that?

(Translation)

Mr. Street, is it not true that what is commonly known in English as "fixing" or bargaining, is customary procedure with the Parole Board? What I mean by bargaining is: someone has co-operated; therefore we should favour his parole.

Mr. STREET: I am sorry, sir, I did not understand you very well. Oh no, not at all sir, this is not possible.

Mr. CHOQUETTE: It is not possible?

Mr. STREET: No, it is not possible, I think you are talking about the arrangements made with the attorney general during the trial with regard to the sentence that this convicted person may receive, but we have nothing to do with that.

Mr. CHOQUETTE: So, you maintain that, during the trial, there is never any communication between the crown attorneys or the Department of Justice and the Parole Board?

Mr. STREET: No, absolutely never.

Mr. CHOQUETTE: There has never been any involvement on your part?

Mr. STREET: No, never.

Mr. CHOQUETTE: Mr. Street, I do not want to set myself up as the Devil's advocate, but we from Quebec still have the sad case of Léopold Dion fresh in our minds.

Mr. STREET: Yes.

Mr. CHOQUETTE: Who did, in fact, benefit from such generosity of the Parole Board and we know what the results were. This explains perhaps our concern, and this is why I want to ask this question. I think I will let the other question go and listen to what my colleagues have to say. I will have more to say later. Thank you.

(English)

The CHAIRMAN: Mr. Goyer, Mr. Tolmie, Mr. Wahn, Mr. Gilbert and Mr. MacEwan.

(Translation)

Mr. GOYER: Mr. Street, I see that you have already sent us the handbook on parole with your annual report for the year 1964, so perhaps we should study it in our offices, however, I think we have already done so. Can you tell me the professions of the people who comprise the Board?

Mr. STREET: Yes. I am a lawyer, before being appointed to the Board, I was a magistrate and a judge of the Family Court; Mr. Edmison is also a lawyer and a former director of the John Howard Society of Toronto; Mr. Dion, from the province of Quebec is also a lawyer and a former attorney general from New Carlisle; Miss Lynch is a lawyer from Saint John; the fifth member, Mr. Tremblay, is our former regional representative in Montreal and a social worker. He was one of our associates before he was appointed to the Board. Are you following my bad French?

Mr. GOYER: Yes, very well. I notice that of the five members, four are lawyers and one is a social worker. Now, I have nothing against lawyers, but I also notice that the Board is often criticized and I am certain that a board such as yours must expect criticism. However, the Board is mostly criticized by the police, which does not mean the director of a police force is necessarily qualified to judge the Board's work. But because policemen are very closely associated with your work, would it not be an advantage for the Board to have a police officer among its members?

Mr. STREET: Yes, I think so. I think it would be a good idea to have a former policeman on the board. You are right; we get a great deal of criticism from many people and often from policemen themselves, but at the same time I think you must remember that the police know only those parolees whose parole has been revoked and they do not run into those who have been successfully paroled. I also think it is important to remember that when a man obtains a parole he is released from prison but remains under surveillance. This is extremely important. It is not as easy for a man under surveillance to commit another offence, whereas if he is released at the end of his sentence, he is completely free, he is not under any surveillance. The fact is that 90 per cent of those who are paroled are well behaved and do not commit any further offence. I think this is good and shows that parole works, and the fact that people are released under supervision is a good thing. Of all the prisoners in prison at this time, more than 80 per cent are recidivists.

Mr. GOYER: As a former magistrate, do you think it would be an advantage to have a police officer and a criminologist on the board?

Mr. STREET: Yes, it is difficult to find a criminologist; there are not too many but we would like to have one, if possible.

Mr. GOYER: Do you have sufficient staff to keep in contact with the liberated persons on parole?

Mr. STREET: No, not everywhere, but we have more people in our organization now than before and it is my intention to recruit more this year and next year. But when it is not possible for one of our officers to supervise a parolee, we get help from other sources. As a rule, it is possible for us to carry out the necessary supervision of the man who is released on parole because otherwise, he would not be released.

Mr. GOYER: Now, you mentioned that it would be difficult, if not impossible, to apply a system of destroying criminal records, particularly an automatic system, with fixed periods. How then do you explain the fact that in several European countries—

Mr. STREET: In several what?

Mr. GOYER: In several European countries. The system of complete liberation and destruction of records after a certain number of years is working very well in a good many European countries. How can you explain that in Canada, this could not take place? I do not quite see the idea of your testimony considering the information given us on comparative studies with European countries.

Mr. STREET: I do not know the practice in other European countries, but I do know that it is not possible either in England or in the United States to destroy former criminal records or even to obtain a normal pardon as in Canada. I am aware of practice in England and in the United States but not in other countries. I know that some other countries have a procedure such as you mention and I am in favour of trying it, but I do not think it should be an automatic system.

English)

Mr. TOLMIE: Mr. Chairman, I will be very brief.

In the first place, the only reason for my remark about parole was that I thought that the witness might be embarrassed, but evidently he was not, and he came forth with some good answers; so that is fine.

I was very much impressed with the actual presentation. It actually was completely relevant to the Bill and it certainly took issue with the major concept of it. That perhaps is most interesting, and will give me—

Mr. STREET: I do not think that I took issue with the major concept, Mr. Tolmie; only with the procedure.

Mr. TOLMIE: Yes; I was going to elaborate on what I mean by "major concept." I think we all agree that some type of expunging of records should be initiated, which would relieve people and bring about a situation in which they are not being continually harassed and relegated to being second-class citizens. I think we all agree on that. The basic question is whether it should be automatic or be on review.

The reason that the Bill was initiated with the tenor that the expunging would be automatic was because (a) emphasis was placed on the individual—perhaps more emphasis than was placed on the protection of society, rightly or wrongly—and (b) I felt initially—and certainly I am subject to change—that a lot of people would not apply; that, in theory, it might be all right to say that we would have a review, but that a lot of people actually would not apply. Firstly, perhaps, because their geographical location would make it inconvenient; or they might conceivably have forgotten about the fact that they did have a record. So that the emphasis was on the idea that it would be automatic. That is why the twelve-year period was first considered because I felt that after twelve years with no offence there might be a good valid argument to have the record erased—though again, of course, that is subject to change.

You place the emphasis on some type of investigation, and again this approach envisages, from what I can see, the greater protection of society. In other words, you do not feel that a person should have his record automatically expunged without some investigation to prove to the Board that this person has completely rehabilitated himself.

Would it be possible to have the onus not on the applicant to apply but on the Board to review cases automatically, make their investigation, and then inform the applicant? By so doing, we might conceivably be able to take the best features of the two concepts. In the first place, we would have the investigation but we would not be putting the onus on people to apply. The answer, of course, that a lot of people give me is that if people are really interested they will apply. I have just one simple question: Is there any possibility of having a procedure which would be initiated by the Board itself rather than by the applicant?

Mr. STREET: I think that would be almost as difficult as the other problem you mentioned, Mr. Tolmie. The idea could certainly be encouraged, that it be brought to the person's attention that it is possible for him to achieve the destruction of a record, or to obtain an ordinary pardon, if he cares to do so. I think that idea certainly could be encouraged.

I do not know that we could do it in all cases—and when I say "we" I was not thinking of the Parole Board doing it. Perhaps I did not make this clear. When I said "we" you probably thought I meant the Board. This is a function which we perform. It was delegated to us, first by the Minister of Justice and now by the Solicitor General. We make investigations for him, which the Act requires our staff to do, but it is not a Board function. If somebody applies for an ordinary pardon we—Mr. Lacasse and other people—make the investigation, and

if it appears to be a good case we recommend it to the Minister and then he accepts it. It is not a Board function at present.

Then, you referred to the fact that many people would not apply. I think that is very true; probably a lot of people would not. On the other hand, a good many people who have a record are not troubled by it; it is not causing them any embarrassment; and perhaps they do not want to be bothered because no matter how discreetly we, or other people, make the investigation—and I think that we and the Royal Canadian Mounted Police can make it more discreetly than anybody else—there are always a few people who are going to learn about it. There is always the chance that he had a record, say, ten or fifteen years ago, which he had when he was a “kid”, and somebody may find out about it. Rather than run that risk, he might not want to go be bothered applying, especially if he is not faced with a problem such as obtaining a bond or obtaining a visa, or something like that. If he did not apply, because it was not worth his trouble, then I suggest that perhaps it would not matter; but if he wants to apply at any time, he could.

It just occurs to me that that is not too much of a problem, but if the procedure which your committee adopts is ever put into effect then we will get many applications. There will be some publicity about it. More people will learn about it, and how to do it; and those people who want it will apply and get it. Those who do not apply probably do not want it and it may not matter too much because they may not be having any embarrassment.

Mr. TOLMIE: I appreciate that. It is a very good answer. That is all, Mr. Chairman.

Mr. WAHN: I believe, Mr. Street, you mentioned that if applications for pardons went to the courts it might overload the courts. Who, then, would have this power of granting ordinary pardons and of making investigations which you suggest should be carried out before one is granted?

Mr. STREET: As I indicated, we do it now. Mr. Lacasse is in charge of our clemency section, and that section has to be extended; we need more people. I think that there should be a clemency section established in the Department of the Solicitor General. Whether it is under our direction, or my direction, or under the Deputy Minister, or a separate organization, or branch, I do not think matters; there should be a proper clemency section, with more people in it than we have at the moment, to receive these applications, process them and make the investigations. At present we make recommendations to the Minister. This is done, under the proclamation of the Royal Prerogative of Mercy, by the Governor General.

Mr. WAHN: You suggest that this would be the procedure to be followed.

Mr. STREET: Well, yes; unless you wanted to consider some form of certificate of rehabilitation—which I think, perhaps, has a good deal of merit, rather than have all these things go through the laborious process of being signed by the Solicitor General and the Governor General, and so on. It is quite a fancy document, under the Great Seal of Canada. All that really would not be necessary, especially if pardons or certificates of rehabilitation were granted in any sort of extensive scale, which I presume your Committee would expect. They might be done by the Parole Board, if you wish, although I am not particularly asking for that function; or by some other person in the Department.

Mr. WAHN: Essentially, it would be an executive or administrative act rather than a judicial act.

Mr. STREET: Well, that is what I would suggest.

Mr. WAHN: That is your recommendation.

Mr. STREET: I have no objection to courts doing it—in fact, I would prefer that they do it—but I just wonder if it is as feasible, because of the publicity, because of the overload of the courts and because of the lack of uniformity. I have no objection.

Mr. WAHN: If it were done by an executive act, in view of what you have said you would have no objection whatsoever to providing for an appeal against a refusal of a pardon.

Mr. STREET: Oh, no; I certainly would not have any objection. In fact, I rather like the idea of courts doing it if it can be worked out. I think that is a good way to do it. I am a little afraid of the publicity.

Mr. WAHN: You pointed out, Mr. Street, that the Bill now before us would not avoid the difficulty which a person would face when applying for an American visa because there are a number of questions asked on a visa application which would reveal the fact he had once been convicted of a crime or suffered imprisonment.

This difficulty would exist whether the pardon is automatic or whether it is selective?

Mr. STREET: Yes.

Mr. WAHN: In other words, to achieve what we want we would have to extend the wording of Mr. Tolmie's Bill to provide that in addition to the conviction being, in effect, nullified, that the person convicted could thereafter deny having been imprisoned for that offence and that any such denial or statement would not render him guilty of a perjury charge. It would have to go further, in other words, and say that he could honestly make statements which would be consistent with the fact that he had not been convicted without being guilty of perjury.

Mr. STREET: Yes; but I do not see how he could do that because the authorities even now would ask him if he had ever received anything like that, and he cannot deny that.

Mr. WAHN: Well, he could if we authorized him to deny it by statute.

Mr. STREET: Oh, I see.

Mr. WAHN: In other words, to give the protection to the individual which you want to give to him, the wording of Mr. Tolmie's Bill is not adequate and would have to be extended along the lines of what I have said?

Mr. STREET: Oh yes; quite obviously. This is what the American Consul told me. I cited to you part of the application form which they must sign and those are the questions they ask. I do not see how he could deny it.

Mr. WAHN: Would there be any objection to a provision which would permit a person to deny that he had been imprisoned for an offense if his conviction has been annulled, either by means of the automatic pardon contemplated by Mr. Tolmie's Bill, or the selective pardon contemplated by you?

Mr. STREET: It is a novel idea. Offhand, I do not see how you can legislate something out of existence.

Mr. WAHN: If you can permit a man to say that he has not been convicted of an offense, you can permit him to say that he has not been imprisoned for the offence for which he has been convicted. One is no more novel than the other.

Mr. STREET: That is true; but can you permit him to say that he has not received any form of clemency, or a certificate of rehabilitation? I find it difficult to—

Mr. WAHN: I do not see why not. You can do anything by statute except make a man a woman and a woman a man, as some poor "chap" once said.

In any case, it is quite obvious that the wording of the present bill does not go far enough to achieve our purpose.

Mr. STREET: Just offhand I do not see how you would overcome the problems with the American authorities; but I do not know any more about that than any Members of the Committee.

Mr. WAHN: But you see no particular objection to—

Mr. STREET: No, not if it is binding.

Mr. WAHN: —having wording along those lines?

Mr. STREET: Not if it is possible; because we can cite many deserving cases where a man is embarrassed by this and is not able to get a visa because of it. On the other hand, the authorities are not all that adamant. It is possible, if he gets a pardon, for instance, that this strengthens his application. They are always prepared to make an exception in a deserving case. They are not completely adamant about it.

Mr. WAHN: Mr. Street, you have mentioned certain disadvantages of the automatic pardon—if I may use that phrase—contemplated by Mr. Tolmie's Bill. I have been very much impressed by a number of the advantages which Mr. Tolmie listed when he described his Bill to us. Clearly there are advantages and disadvantages in both procedures.

The disadvantages in the procedure which you suggest are quite obvious, too, namely, that from your own remarks it is apparent that no matter how careful or discreet you may be people in the community may get to know about this investigation which is being conducted—

Mr. STREET: Yes.

Mr. WAHN: —if one is conducted.

Secondly, it will overload your facilities if there are many of them, and will increase the expense; and, finally there is the psychological drawback, that I would think that a person who had been convicted and had lived a crime-free life for twelve years or so just would not want to initiate a new investigation. He wants to forget about the whole thing. He has put it behind him, and he does not see why society should be interested in him any further. There are many, many advantages to the automatic pardon—

Mr. STREET: Yes, there are.

Mr. WAHN: —as contemplated by Mr. Tolmie, and there are disadvantages, as well. Could there be a possible compromise along the lines that there

should be an automatic pardon after a specified number of years and that the records, instead of being destroyed, should be moved into a secret file, as you have suggested, so that if the man was later convicted of a serious offence the earlier conviction would, in effect, be revived and could be taken into consideration in determining the sentence which he received?

Mr. STREET: You say, if the earlier conviction could not be taken into consideration—?

Mr. WAHN: This is a compromise suggestion—

Mr. STREET: Oh, yes.

Mr. WAHN: —that I am making, that the record of his earlier conviction be not destroyed but moved into a secret file, just as you have mentioned and then if he is again convicted of a serious offence—for example, this case that you mention, where a man went for fifteen years and then committed a second sexual offence—if his earlier conviction can, in effect, be revived and taken into consideration for the purpose of determining the sentence to be imposed upon him for the second offence?

Mr. STREET: Yes.

Mr. WAHN: Would this not give society the protection it needs but still retain the advantages of the automatic pardon for all those—and I presume they are in the majority—who do not in fact commit a second offence?

Mr. STREET: Well, it certainly would, Mr. Wahn, if it worked the way that you and I think it should work, and the way that we would like to see it work; but that is the way it is now. What I mean is that no one except an authorized police force is supposed to get this information from the Identification Branch of the Royal Canadian Mounted Police.

Mr. WAHN: No; I do not think you follow my suggestion. At the present time a man who had been convicted of an offence must say that he had been convicted of an offence, in any questionnaire.

Mr. STREET: Yes; I see.

Mr. WAHN: My suggestion is that after the five-year period, or the ten year period, or whatever the specified period is, there should be an automatic annulment of that conviction, but that if, in fact, after that annulment, he is again guilty of a serious offence the original conviction should, in effect, be revived on his record. That is, unless he is convicted again he can go about quite honestly saying "I have never been convicted of a criminal offence".

Mr. STREET: Well, if the certificate says that he shall be deemed not to have committed it, unless it comes up again, that would be fine; I agree. I wish that could be done. That would get to the deserving cases and still overcome the—

Mr. WAHN: Would it not give the necessary protection to society and at the same time avoid the necessity of investigation of specific cases?

Mr. STREET: Yes; it would be ideal if we could do that; but I wonder what would happen if, for instance, a man of about thirty years of age were charged with a serious offence? The police would not know whether or not he had been convicted previously. In order to achieve the purpose you have in mind they would have to find out, and therefore they would have to make a request for the

record, which is what they do now. They would then have to search the inactive files to find out if this man had a record and then send it out for the information of the judge or the court in determining the appropriate sentence. That is how it is supposed to work now, but there are a lot of leaks. If that system were introduced there would probably be a lot of leaks through unauthorized sources.

I would almost rather not worry about whether or not he gets a longer sentence on his subsequent conviction. I do not think that is much of a problem except, as in the case I cited, with the dangerous sexual offender; and that is an extreme case. I would almost be not so much concerned about that and have the files dead and have his record dead, or in an inactive file. It would then be available to us if he came up for parole, and we would check it out to see if he had previous convictions; or perhaps the government might want to check for security reasons, or something like that. Whether or not the court got it would not be all that terribly serious, I think, if he had not been convicted for twelve years.

If this were so, then it would achieve the result that you obviously have in mind and which I, too, hope can be achieved.

Mr. WAHN: Well, then how would that work? Let us say that there is an automatic annulment of the conviction in five years. Then if he were charged after that, you say—?

Mr. STREET: It is at that time that you spoke of their getting his record, or reactivating—?

Mr. WAHN: I spoke of his being convicted a second time, not just being charged.

Mr. STREET: Oh, I am sorry; I thought you were speaking of the problem of sentencing. If you are just speaking of conviction then there would not be too much of a problem involved.

Mr. WAHN: Do you see any necessity for the record being made available to the police at the time of a charge being made against the man?

Mr. STREET: Not so much, no; because if you provided for that then you would have the system as it is supposed to be now, and you would have all the leaks and problems that we have now which we should not have.

Mr. WAHN: Yes.

Mr. STREET: No; if you were going to do that I would rather see it arranged, as you suggest, so that even the court that tried him would not know that he had committed an offence five or ten years before and would sentence him accordingly, without any knowledge of any previous convictions. I do not think that would be very serious.

However, after he is convicted, as you say, then the record would be available to people who need to have it. It is we who need to have it, because we decide whether or not we are going to parole him, or the penitentiary people may want to know how to treat him, or something of that nature.

Mr. WAHN: It could even be made available to the judge after conviction, but before sentence.

Mr. STREET: That is how it is now.

Mr. WAHN: The advantage would be that if a man did not commit this second offence he could go through life knowing that his original conviction had been automatically annulled—

Mr. STREET: Yes.

Mr. WAHN: —without having any investigation.

Mr. STREET: Of course, as you know, the judge does not see the record until after the conviction now, anyway.

Mr. WAHN: Yes, I know.

Mr. GILBERT: He sees it if the accused puts in evidence on character.

Mr. STREET: Yes; he could see it then.

Mr. WAHN: The other possible compromise between the automatic pardon and the selective pardon, is to permit a selective pardon after five years and an automatic pardon after a longer period, say, twelve or fifteen years, whichever is decided upon.

Mr. STREET: That is a good "out".

Mr. WAHN: Which of these two alternatives would make more sense, from your point of view?

Mr. STREET: The two alternatives being automatically after twelve years and after five years with an investigation, as against automatically; but subject to the provision that upon further conviction the record might be reactivated?

Mr. WAHN: Those are the two alternatives that occur to me to try to reconcile the differences between the two methods. There may be other alternatives.

Mr. STREET: Were you suggesting automatically after say, twelve years, as the Bill suggests?

Mr. WAHN: I would even say fifteen years if that would be better.

Mr. STREET: Yes.

The CHAIRMAN: Is that all, Mr. Wahn?

Mr. STREET: I do not know; I think that each has a good deal of merit, Mr. Wahn. I do not have any particular preference.

Mr. WAHN: That is all, Mr. Chairman. /

Mr. GILBERT: Mr. Chairman, I would like to ask Mr. Street for his views on the period of time in which the application should be made. Mr. Tolmie has indicated a twelve year period. We had Mr. Kirkpatrick here the other day and he indicated a five year period.

What are your views, Mr. Street?

Mr. STREET: My views at present are that I do not like to be arbitrary in anything. I like to be flexible in everything. I like to judge each case on its individual merits. I do not like to be tied down by arbitrary rules or regulations.

Generally speaking, five years is what we think about in terms of the granting of an ordinary pardon, if it is a deserving case. Until we were concerned with it—and the last three or four solicitors general have agree with a more liberal policy in granting pardons—it used to be ten or fifteen years. In the

last few years it has become easier and, as I say, five years is roughly the minimum. If it is a serious offence perhaps you would not do it, but if it is not too terribly serious we would.

Perhaps I should give you some idea of the practice and how it has developed over a period of years.

Between 1910 and 1958 there were only 25 ordinary pardons granted. In 1966 there were 23 granted in that one year, and another 23 in the two previous years. Therefore you will see that the policy has relaxed a bit.

To come back to your question, I would say that roughly five years would be more or less the minimum; but even then I would not want to be too circumspect about it. However five years might not be very long if a man had several convictions and a bad record. If it is a single offence and especially if it is not serious, I would say that five years is sufficient.

Mr. GILBERT: Would you make any distinction in the age of the person, as Mr. Tolmie has done? He has divided it into two age groups—up to 21 years and over 21 years. Would you make that distinction?

Mr. STREET: I would be inclined to, because, as I say, it is by the age group from 16 years to 24 years that most of the offences are committed therefore, although you are sympathetic to them I think you have to be a little more careful. I do not think, if it were up to me, that I would grant an ordinary pardon to a man under 25 years of age until he had gone five years since his last conviction and it appeared that his reputation was good and that he deserved it.

Mr. GILBERT: What you are saying in effect, then, is that if a young offender of 18 years of age, say, served two years he would be 20 years of age and under your scheme he would not get a pardon until he was 25 years of age?

Mr. STREET: That is roughly correct. I would make provision for exceptions to that practice, of course, because again I do not agree with arbitrary rules. If he is especially deserving say, a university graduate—you can cite lots of extreme cases where he might deserve it in two years. I would not be arbitrary about it.

If you are going to provide for it automatically you have to state a time, but I would always have a provision so that a deserving case might be pardoned within a year. I do not think we should tie ourselves down to anything. He might deserve something like this. He might be a university graduate and want to take his Ph.D. in California. In order to do so he has to have a pardon. He may need a couple years of university, and so on. I would do it.

Mr. GILBERT: You could always include, say, the five year period subject to special circumstances.

Mr. STREET: Yes.

Mr. GILBERT: In other words, give the Minister discretion in cases like that.

Mr. STREET: I agree. Judge each case according to its own individual circumstances, and if he deserves it give it to him. Do not worry about any arbitrary rule of practice.

Mr. GILBERT: Mr. Street, Mr. Kirkpatrick indicated two types of pardon—the free pardon and the conditional pardon. He said that the free pardon carried the words “shall be deemed not to have committed the offence”. These words do not appear in the conditional pardon. If you were granting pardons

would you include those words? Do you think they should be included in a conditional pardon?

Mr. STREET: Yes. I do. Free pardon in Canada is granted only when it appears that the person was improperly convicted; that he did not commit the offence for which he was convicted and is found to have been innocent. Naturally, this does not happen very often, but it is a complete recognition of innocence based on new evidence that has come to light, and so on.

Other than that, there is what is called an ordinary pardon, or what is referred to as a conditional pardon; but in practice the use of the word "ordinary" has come up, which means simply an act of forgiveness. It means that in the opinion of the authorities—the Crown and so on—this person is considered deserving of the exercise of the Royal Prerogative of Mercy and has a good reputation and so on. It has no effect other than that or it should not have.

Mr. GILBERT: It does not carry with it those words that I have mentioned.

Mr. STREET: No; and I think it should.

Mr. GILBERT: It should.

Mr. STREET: But it does not, because we have no authority to do it now.

Mr. GILBERT: Mr. Street, I gathered from your presentation that you agreed to a pardon being granted to a person who may have committed only one offence. Mr. Tolmie's Bill indicates only one offence, although he has made it clear to the Committee that he meant more than one.

There is the question of recidivism. We have had statistical evidence that recidivism happens to offenders, 44 per cent within six months, 75 per cent within one year and 97 per cent within two years. This is evidence that has been presented to the Committee. Do you agree with that?

Mr. STREET: Yes. Yes, I have—

Mr. GILBERT: This indicates the importance of taking a very close look at those with more than one offence. One of the recommendations we had was that we should not worry too much about the number of offences that the person has committed; that we should direct our minds to his rehabilitation in the community, using the test that you see with regard to getting a pardon.

Mr. STREET: I agree.

Mr. GILBERT: I rather caught the impression from your remarks that you may not be too happy about the recidivist.

Mr. STREET: Not while he is a recidivist; but after he has abandoned a life of crime and it is quite obvious that he is rehabilitated, and when everything points to his not intending to commit another offence—and we can cite lots of cases like this, of men in prominent positions, and so on—then I would not worry if he had a record of ten offences. I would give him a clear record because he deserves it, but it takes some time to establish this. He has to demonstrate that he has a good reputation, that he is living a law-abiding life and is a useful and productive citizen. If he deserves it. I would not worry about the number of offences. Again, I would judge the application on the individual merits of the case.

Mr. GILBERT: I wonder if I could just follow this up with another question with regard to the type of offence? We have also heard evidence that the type of

offence is an important factor. Evidence has been brought forth that people who have been convicted of capital or non-capital murder have a better record, with regard to reformation, than persons who have committed other offences. These people should be considered for pardons.

Then there is your example of the rape case, the sexual offender. One of the recommendations we had from another witness was that there should be no distinction with regard to the type of offence that had been committed, and that we should again fall back on the test that you just recommended. It is the rehabilitation of the person after he has served his sentence. What do you think of that?

Mr. STREET: So far as a murderer is concerned you are correct, in that of all the people we have on parole we have less trouble with murderers than with any other class of offender. But in saying this I think you have to keep in mind that the people whom we have been paroling during the last eight years are the ones whose sentences were commuted 10 or 15 years ago, at which time they were not so disposed to commute sentences. A lot of people were hung. The serious, vicious, cold-blooded, premeditated murderers were hung at that time, so therefore the ones who were left were the better risks; the accidental offenders, you might say; the circumstantial offenders people who became involved in fights or in situations which are not likely to repeat themselves. Pretty soon, though, since there are more commutations, we will be faced with some pretty vicious people and probably some of them will never be paroled. We did not have this problem before. In other words, the people whose sentences were commuted 10 years ago, generally speaking, were good risks. That is the situation about murderers.

You mentioned the others. I would not be concerned about the type of offence, that would not matter, I would be concerned with whether or not his reputation is such that he deserves it. The case I cited to you about a sexual offender is rather an extreme one because there have only been about 50 people convicted as dangerous sexual offenders in the history of Canada. This man happened to be one of those 50. That section of the act is not used as much as it might be, but that happened to be one of the cases where it was used.

When you talk about sex offences, these have terrible connotations to the public. However, there are hundreds of sex offenders who are not all that bad in the sense that they are not psychopaths. As soon as one thinks of a psychotic or psychopathic person—a person who does not have control over his emotions—naturally you are dealing with a very dangerous situation, but all sex offenders are not like that. I do not know if I have made myself clear or not.

Mr. GILBERT: What you are really saying is that Mr. Choquette should not have too many worries about men like Dion and Red Ryan. Is that what you are saying?

Mr. STREET: Oh, God, no. Of course, Dion was a rather unusual case.

Mr. GILBERT: His was a very exceptional case.

Mr. STREET: He spent 22 years in prison on a charge of rape and there was no indication that he was interested in the type of offence which he did later commit. He had been on parole for nine months, during which time his behaviour was perfectly good, and then something happened. What happened? Did his mind snap or just what did happen? He was given clearance by psychiatrists,

and so on, and everything looked good and then something happened, the consequences of which were tragic—beyond description—I agree, but there was no indication that that man was interested in the form of offence for which he has now been convicted.

Mr. CHOQUETTE: If I may interrupt, Mr. Street.

The CHAIRMAN: Do you have a supplementary question?

Mr. CHOQUETTE: Yes, I have a supplementary question. In 1962—I was in the courtroom—I remember the case of four soldiers who had had a little drink, took a girl to a room, raped her, burned her and did everything that could be done in a savage way. They were condemned to 18 years with the lash. I cannot remember the name of the judge but I was there when the sentencing took place. Those men are now free after serving five years and they were condemned to 18 years. If you want to check on this case, it was four soldiers from Quebec city who attacked the girl. The way they did it was so savage and cruel, and now they are free.

I have another point. You said that you would like every case to be judged individually. If you have had 18,000 cases during eight years, how would it be possible for you to seriously judge every case? That is one of the objections to that theory. You say you want to consider each case individually.

Mr. STREET: We most certainly do. We have five members on the board and we have a rather large staff of people who prepare these cases very carefully for us. In eight years we have granted 18,000 paroles and, as I indicated, they were very carefully considered. Each year we deal with about 10,000 cases and they are considered carefully. Most of them are turned down because they are not good enough to be considered for parole, but we certainly discuss and consider these cases very carefully.

Mr. GILBERT: I am sorry if I interrupted you, Mr. Choquette. Mr. Street, do you think there should be a separate board with regard to applications under Mr. Tolmie's bill, as contrasted with the board which you now have with regard to applications for pardons?

Mr. STREET: The pardoning board?

Mr. GILBERT: Do you know what I mean? There is going to be a different attitude or approach. The applications which you have at the moment are in a different category than the applications that would be presented to you under Mr. Tolmie's bill.

Mr. STREET: I do not see any objection to a separate board except that the two are rather related. I think it would be quite a strain on the resources of the National Parole Board to expect them to do it all, even though we hope that our board will be extended so that we will be able to make trips to institutions and have hearings and increase the use of parole, and so on. If that were to happen and the Parole Board were increased to, say, 10 members, then it would not be quite as serious to have them do it. I do not think it matters much, but in other areas—in some of the American systems—it is done by what is called the Pardon and Parole Board, for instance. I suppose it is a matter of whether you decide it is to be done, as Mr. Wahn said, by an executive or administrative act or by a board. I do not think it matters much.

Mr. GILBERT: I have one final question, Mr. Street. In your answer to Mr. Wahn—Mr. Wahn was worried about the visa problem that men have—you set forth the wording of the act which is so comprehensive that the fellow just cannot squeeze out of it. Is that not true? It seems to me that the only way you could get around that would be by having reciprocal legislation with the United States. I do not see how else you could get around it.

Mr. STREET: I do not either. We can hardly tell them who to let in and who not to let in. We can legislate a crime out of existence in the sense that he would be deemed not to have committed it, but how can you say when he has been granted an act of clemency, such as the destruction of his record, or something, that he is entitled to deny that he was ever granted this?

Mr. GILBERT: That is right.

Mr. STREET: Unless we say that we are legislating another fact out of existence. It is a rather novel idea if it could be done, but we will find that the Americans will certainly find out about it.

Mr. GILBERT: Thank you, Mr. Street.

Mr. MACEWAN: I have a very short question as the waterfront has been pretty well covered, Mr. Chairman. I certainly agree with Mr. Choquette's last remarks and I think in a bill like this, with all the cases and applications, if you make it on the basis of selection there has to be a minimum period set for people to apply in the various cases. I think there was a question earlier, Mr. Street, that if you have insufficient staff you call other agencies throughout the country to assist your board in its work. What other agencies do you use?

Mr. STREET: We have after-care agencies such as the John Howard Society, the Salvation Army, the Société d'Orientation et de Réhabilitation Sociale, Le Service de Réadaptation Sociale in Quebec, and many other Quebec agencies as well. They do some of it for us. The provincial probation officers do a great deal of supervision for us. Those are the two main sources; after-care agencies or provincial probation officers. We are expanding our staff and our staff are doing more and more supervision. It will be some time before we can do it all, and even then we could never do it in the outlying areas.

Mr. MACEWAN: And the Royal Canadian Mounted Police also?

Mr. STREET: Sometimes they do look after it in outlying areas, yes. They always report to the police anyway.

Mr. MACEWAN: Yes; would you envisage, then, in cases as set out in this bill, or whatever bill may come up, that the same personnel would carry out the mechanics of the process?

Mr. STREET: Investigations?

Mr. MACEWAN: Yes.

Mr. STREET: Yes, I would think so. Generally speaking, the Royal Canadian Mounted Police usually do the community investigation, check the man out in the community to see how he is getting along, and then we get reports from the police force that prosecuted him, the judge who convicted him, and we learn all about the circumstances surrounding the offence. As for his present reputation, that is generally done by the Royal Canadian Mounted Police officers.

Mr. MACEWAN: Thank you, Mr. Street.

Mr. CANTIN: Mr. Chairman, when I was parliamentary secretary to the Minister of Justice I had the privilege of meeting Mr. George Street, particularly during conferences on criminology, and I would like to attest to his great experience, his competence and his good judgment.

Mr. Street, you spoke of a certificate of rehabilitation.

Mr. STREET: Yes, I mentioned it.

• (12:57)

Mr. CANTIN: You mentioned it as a possible alternative. Do you not think that this certificate should grant certain privileges, such as authorizing holders of such certificates to answer negatively any questionnaires regarding their criminal record, so that they are not constantly reminded of it?

Mr. STREET: I beg your pardon, sir?

Mr. CANTIN: So that they are not constantly reminded of a conviction?

Mr. STREET: Yes, I agree.

Mr. CANTIN: That is the question I wanted to ask. The holder of such a certificate should be able to state, during any investigation about himself, that he has never been convicted?

Mr. STREET: Yes, I agree that this certificate of rehabilitation should apply in all cases; otherwise it will not be effective.

Mr. CANTIN: Thank you, Mr. Street.

(Translation)

Mr. CHOQUETTE: I am thinking of someone who has to fill out an application for a job, or to get a licence. If he has this certificate, he would not be obliged to state on the form that he has been convicted, even if the question is asked. Is this correct?

For instance, if a person wants to get a liquor permit from the Liquor Board, and on the application it asks if you have ever been convicted, with this particular certificate, the person would not be obliged to answer that he has been convicted?

Mr. STREET: Yes, that is right.

Mr. CHOQUETTE: This is what you want.

Mr. STREET: This is necessary if the certificate is to be completely effective; otherwise, it is useless.

Mr. CHOQUETTE: My last question, Mr. Street, has to do with whether you are generally satisfied with the publicity which is given by the news media with regard to criminals, or would you prefer more or less publicity?

Mr. STREET: I do not believe I have any definite opinion on this subject. I think that the publicity given to criminals and to crime itself is usually reasonable.

Mr. CHOQUETTE: Reasonable?

Mr. STREET: Yes, I think so, even if we do get a lot of unjustified criticism.

Mr. CHOQUETTE: There are two schools of thought. One wants all possible publicity given to this matter so as to place an even greater stigma on the criminal and another wants the whole thing ignored because often some criminals are quite pleased to see themselves mentioned in the press, and so forth.

The CHAIRMAN: Do you have any other—

(English)

Mr. Forest? Oh, I am sorry; you have not asked a question yet. I thought perhaps you might have one.

Mr. FOREST: No. I was not here when Mr. Street made his presentation. I was at another committee.

Do I understand correctly that although this Bill provides for the courts to render the order for a pardon you would be in favour of having the National Parole Board grant the order that the person "shall be deemed not to have committed the offence"? Is that right?

Mr. STREET: I did not exactly mean to suggest that it be the National Parole Board. I suggest that it simply be done by somebody, as we do it now; but it has nothing to do with the Parole Board. The Parole Board does not grant pardons. The pardons are granted by the Solicitor General. We do the investigation and make the recommendations to him. No, I did not mean to suggest that the Parole Board itself would do it.

I just meant that some person with federal authority would do the investigation, with the co-operation of the police and so on. Whether it is done by the Minister, as it is now, or done by a certificate of rehabilitation, which is granted by someone else, I had not discussed.

I did mention, though, the idea of leaving the pardon as it is—as an extraordinary exercise of the Royal Prerogative of Mercy. As I say, it is under the Great Seal of Canada. Leave that as it is and use some other means, such as a certificate of rehabilitation, to achieve the purpose which we all I am sure have in mind with respect to records. Whether those certificates are granted by the Parole Board, which could be done, or by the Minister, or by someone else—for example, the senior clemency officer—I do not think matters much. I do not think it is necessary to have another board to do it and I do not think that it is even necessary for the Parole Board to do it. Someone could do it. Someone could recommend it to the Minister. I do not think that matters. I had not thought to discuss the details of that.

I simply suggest that perhaps it would be better, rather than use the extraordinary powers of clemency under the Royal Prerogative of Mercy, such as we do now in granting ordinary pardons, that there be another means devised, such as the certificate of rehabilitation, to accomplish the same thing, and to leave the other pardoning power for more extraordinary things.

Mr. FOREST: What about an appeal from that decision?

Mr. STREET: I see no harm in appeal.

Mr. FOREST: It could go to another board.

Mr. STREET: I would like to have appeals from our decisions, too.

Mr. FOREST: Where could it go?

Mr. STREET: From us?

Mr. FOREST: Yes.

Mr. STREET: I do not know; but there could be an appeal to a court from an administrative decision, if it is an administrative decision, to refuse a certificate of rehabilitation. I could see no harm in that. I think this is what Mr. Aiken was getting at in his views on the matter.

The CHAIRMAN: Mr. Goyer, do you have another question?

(Translation)

Mr. GOYER: I find the board has often been unjustly criticized, particularly in the province of Quebec in recent years. Reading the annual report of the board I find the results are extremely interesting and deserving of more explanation than the public has been given.

Mr. STREET: That is correct.

Mr. GOYER: In this respect could we not ask Mr. Street to appear before the Committee, not to discuss a bill but as chairman of the Board, and to answer the members' questions? I think this would really give the Board an opportunity to explain its policy openly. I think that this is essential right now, otherwise there is a danger of destroying an institution which deserves help, and has asked for it in its annual report of December 31, 1964. Mr. Street says at the end of the foreword:

"This degree of excellence can only be maintained if the service receives the financial and moral support it needs."

This also depends on us to a large extent. The attacks may come from elsewhere, but the defence could come from us. Thus, I wonder if it would be possible for Mr. Street to come back—apart from the consideration of this bill—so that a study may be made of the National Parole Board's policy.

(English)

The CHAIRMAN: That is a very interesting problem you have raised. I do not really know that it would come under the jurisdiction of this Committee unless it was specifically referred to us. However, I will discuss it with the steering committee and with you, Mr. Goyer, and if it can be arranged then I am sure that Mr. Street will be very glad to come before the Committee and explain the operations of the National Parole Board. It might be of great national advantage to the people of Canada to know just how it does function. However, I am rather inclined to have qualifications in my mind on whether it has been assigned to us as one of the subject matters for discussion.

Mr. CHOQUETTE: There is one possibility. A Member could introduce a bill to abolish the Commission, and then we would have him as a witness!

The CHAIRMAN: That is one way of doing it.

Mr. MACEWAN: That would require an Order of the House.

The CHAIRMAN: Mr. Street, on behalf of the Committee I want to thank you most sincerely for your attendance this morning. You have given us a lot of very valuable information that we could not have obtained in any other way. You have been very frank and very complete in your answers. On behalf of the Committee I want to express to you our very sincere appreciation.

I have been informed that on Tuesday the Ontario Magistrates' Association, as I believe it is called, will be before the Committee on the same subject matter.

The meeting is adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

Government
Publications

First Session—Twenty-seventh Parliament

1966-67

STANDING COMMITTEE

ON

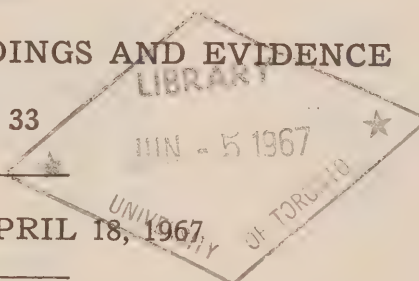
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 33

TUESDAY, APRIL 18, 1967



Respecting the subject-matter of
Bill C-192, An Act to Amend the Criminal Code
(Destruction of Criminal Records)

and

INCLUDING

- 1) The Eleventh Report to the House.
- 2) Index to Minutes of Proceedings and Evidence Nos. 1 through 33, respecting all matters studied by the Committee.

WITNESSES:

from the Ontario Magistrates Association: Senior Magistrate W. J. Tuchtie, Q.C.; Magistrate L. A. Sherwood, First Vice-President; and Magistrate F. C. Hayes, Second Vice-President.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

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and

Mr. Addison,	Mr. Honey,	Mr. Ryan,
Mr. Aiken,	Mr. Latulippe,	¹ Mr. Scott (<i>Danforth</i>),
Mr. Cantin,	Mr. MacEwan,	Mr. Tolmie,
Mr. Choquette,	Mr. Mandziuk,	Mr. Wahn,
Mr. Gilbert,	Mr. McQuaid,	Mr. Whelan,
Mr. Goyer,	Mr. Nielsen,	Mr. Woolliams—24.
Mr. Grafftey,	Mr. Otto,	
Mr. Guay,	Mr. Pugh,	

(Quorum 10)

¹Replaced Mr. Mather, Friday, April 14, 1967.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

FRIDAY, April 14, 1967.

Ordered,—That the name of Mr. Scott (*Danforth*) be substituted for that of Mr. Mather on the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

REPORT TO THE HOUSE

WEDNESDAY, April 26, 1967.

ELEVENTH REPORT

Your Committee presented its Tenth Report on Tuesday, March 21, 1967, relating to Auto Safety.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 3, 4, 5, 7, 10, 11, 16, 18, 20, 21, 26, 27, 29 and 33*) is tabled.

Respectfully submitted

A. J. P. CAMERON
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, April 18, 1967.

(44)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m. The Chairman, Mr. Cameron presided.

Members present: Messrs Aiken, Cameron (*High Park*), Choquette, Forest, Honey, Mandizuk, MacEwen, McQuaid, Pugh, Tolmie, Wahn (11).

In attendance: From the Ontario Magistrates Association: Senior Magistrate W. J. Tuchtie, Q.C., President; Magistrate L. A. Sherwood, First Vice-President; and Magistrate F. C. Hayes, Second Vice-President.

On motion of Mr. Wahn, seconded by Mr. McQuaid.

Resolved—That the Committee undertake to host and cover the cost for a dinner to be held in honour of Lark Parker of Waddington, Lord Chief Justice of England, May 3, 1967 and that the Steering Committee decide on a guest list; and that reasonable living and travelling expenses be paid Lord Parker who will appear before the Committee May 3, 1967; and that he be paid a per diem of \$50.00; subject to the approval of Mr. Speaker.

The Chairman introduced the representatives of the Magistrates Association. Senior Magistrate Tuchtie, Magistrate Sherwood, then Magistrate Hayes each made statements re Bill C-192.

Agreed—That the Ontario Magistrates' Association Report—*Probation Committee—1964* be printed as an appendix (*see appendix 23*), and

That the document *Suspended Sentence and Probation* be made an exhibit (*see exhibit 57*).

The Committee then proceeded to the questioning.

On a suggestion by Mr. Aiken it was

Agreed,—That the Clerk of the Committee secure copies of bonding forms for distribution to the Members of the Committee.

At the termination of the questioning the Chairman thanked the witnesses for their valuable contribution to the Committees proceedings.

At 1.00 p.m. the meeting adjourned to the call of the Chair.

Timothy D. Ray
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

TUESDAY, 18 April, 1967.

The CHAIRMAN: Gentlemen we have a quorum.

In respect of the pending visit of Lord Parker of Waddington, Lord Chief Justice of England, we have been making very considerable progress and I think it is going to be a very eventful day in the lifetime of this Committee.

However, in order to satisfy certain legal requirements, and so the Chairman probably will not be invited to pay a large amount of money, I would like to have a motion that the Committee undertake to host and cover the cost for a dinner to be held in honour of Lord Parker of Waddington, Lord Chief Justice of England on May 3, 1967; that the Steering Committee decide on a guest list, and that reasonable living and travelling expenses be paid Lord Parker who will appear before the Committee May 3, 1967; and that he be paid a *per diem* of \$50.00; subject to the approval of Mr. Speaker.

In connection with the motion, I may say that he is coming from Montreal and a plane will be available to convey him from Montreal to Ottawa, so the main expense is going to be for providing the dinner.

May I say I also had the pleasure of meeting the right hon. Leader of the Opposition (Mr. Diefenbaker) in the corridor this morning and I told him about it, and he told me that he was a very old friend of Lord Parker, and he would be very, very pleased indeed to receive an invitation from the Committee to be present at our dinner.

Mr. PUGH: Mr. Chairman, the one thing that the Leader of the Opposition might not have taken up is the wine list, and I was wondering whether that should be submitted.

The CHAIRMAN: Well, I do not know; I think perhaps we had better leave that in abeyance for the time being.

Would you care to make that motion, Mr. Wahn?

Mr. WAHN: I so move.

Mr. MACEWAN: I second the motion.

The CHAIRMAN: Is there any discussion? All those in favour of the motion or contrary minded, if any?

Motion agreed to.

I have the honour to introduce this morning, from the Ontario Magistrates association, Senior Magistrate W. J. Tuchtie, Q.C., who is the president, to my immediate right; Magistrate Livius A. Sherwood, first vice-president, who is from Ottawa; and Magistrate F. C. Hayes, second vice-president, who comes from the Magistrates Courts in Toronto. They are here to discuss Mr. Tolmie's bill, Bill No. C-192, relating to the destruction of criminal records. Without any

further remarks on my part I am going to ask Magistrate Tuchtie to make his presentation.

Senior Magistrate W. J. TUCHTIE Q.C. (*President, Ontario Magistrates Association*): Thank you very much, Mr. Chairman and gentlemen of this Committee for inviting us here. We are very pleased to come and I am very glad to know that you are inviting us to the dinner on May 3 for the Chief Justice.

Now, I might say quite seriously that we the magistrates of this association, which has been going on for some years, it is not just a get together association, we have committees and we carry on a considerable amount of study, have been studying this matter for some time. You will eventually hear from Magistrate Sherwood, who is the chairman of the committee that studied this matter, and we started in 1964. So, we have given this a considerable amount of thought. We are not just an association that only meets once or twice a year, we have committee meetings going on constantly and we study these problems.

When you consider that 95 per cent of the sentencing of people convicted in this province is done by us, the magistrates, you will appreciate that we have some experience, that we are vitally interested in it and we would like to see the proper type or legislation passed, because it affects us as much as it does the rest of the public.

Now, there are three phases to this bill. I am going to speak generally on one of them and the other magistrates would like to make some comments. We, as magistrates of the province of Ontario, are in favour of criminal records being expunged for good behaviour. At one time in our study we said after a period of five years, and that is because it was covered by Section 638 of the Criminal Code. However, as far as we are concerned it does not necessarily have to be five years, it could be more. I see by your bill it is 12 years. Now, whether 12 years is too long a time, perhaps you gentlemen will know better from listening to other people who may make comments. From my own experience I am always surprised and shocked to see a man reverting back to crime when he has gone for five years without committing an offense. It must be something very unusual, something that has happened in his circumstances that is so unusual that he commits an offence after he has gone without for five years. Most people after they have left a life of crime do not revert after five years.

Secondly, we feel it should not be automatic. We feel that a person who wants to have his record expunged should make an application to someone, such as the Minister of Justice or the Solicitor General, so that he will receive an official notification whereby he can now say he has no record. I think this would be of great value. From our experience we believe that to a person having this certificate, or what have you, before him it will mean that every time there may be a temptation in his mind he will see this very certificate and realize that it may change his whole life if he loses it. There should be some form of letting him know that he now may start saying to the public at large that he no longer has a record.

Now, we feel—and we thought so in 1964, and Magistrate Sherwood will point this out to you—that this record should not be destroyed. In other words, there should be some place where this record should be kept secret. The public should not be permitted to see or obtain it, it should really be only for the courts, if ever needed, and for two reasons in particular; one is that I cannot see that the

intention should be that he should expunge his record every five years, it should only be once in his lifetime. If you destroy it and five years later he commits another offence, you cannot tell that it is the second time he has done it if you have destroyed the record.

Secondly, if he should come before the court again we believe that that record should be revived for court purposes only, and therefore he should not then be treated as a first offender, which he would be if you destroyed his record. So, our feeling is that the record should not be destroyed; it should be put away in somebody's custody in some special place where it is not open to the public and the courts may have it revived, if necessary. We believe that this is a step forward in the right direction. We advocated it some time ago and I think we have had, examples before us in the press only within the last day or so. You perhaps will recall about the young gentlemen, I think he was the youngest member in Nova Scotia and about whom you spoke, Mr. Cameron?

The CHAIRMAN: Yes.

Magistrate TUCHTIE: Who had the same problem.

The CHAIRMAN: He was elected.

Magistrate TUCHTIE: We feel that if a man has rehabilitated himself after a certain period of time—whatever period of time your committee thinks proper—that that man should be entitled to go back amongst the public. He has paid for his crime. He has shown by his subsequent behaviour that he is entitled to re-establish himself as a new citizen in the community, and we feel generally that this would be very beneficial to the various members of our society. I will now with your permission, sir, call on Magistrate Sherwood, who would like to speak on another phase of this.

The CHAIRMAN: Certainly but do not think that you are through. Your ordeal stills lies ahead of you.

Magistrate TUCHTIE: I appreciate that.

The CHAIRMAN: And there will be questions.

Magistrate TUCHTIE: We will be very glad to answer them if we can.

Magistrate LIVIUS A. SHERWOOD (*First Vice-President, Ontario Magistrates Association*): Mr. Chairman and members, thank you very much. We appreciate that you will probably have some questions. Our interest in expunging criminal records actually arose out of a broader concern on the part of magistrates in Ontario. The broader concern related to ways in which we might be able to prevent people from ever acquiring criminal records. Our studies arose out of the work of a committee known as our Probation Committee, which began its work in 1963, and about ten copies of our 1964 report are in circulation. The material part of it starts at page 3.

Probation is a very widely used remedy for first offenders. It is one of the most successful criminal remedies on record. In Ontario, at least, the percentage of probationers who are successful in completing the probation runs around 75 to 76 per cent. Now, one might ask where or why we use probation, and the criteria generally should be this. First of all, is it safe to the public to leave this person at large and try and rehabilitate him in the community? Secondly, is there some reasonable expectation that he can rehabilitate himself in the community? For

example, are his family now aware of his problem and willing to help? Are outside agencies prepared to help him? Has he shown some indications in the past that he has not devoted himself completely to a criminal life and may be rehabilitatable, if there is such a word. So, it is not surprising that there is a fairly high degree of success because we have put our best risks on probation.

However, we ran into a couple of problems right away. First of all, under the present Section 638 of the Criminal Code—and there are ten copies of that section in circulation—probation can only be used for a person who is first offender or a person who has only one previous conviction, and it is either more than five years old or, if within five years, was for a completely different sort of offence. So that if he was a second offender for stealing a car, he previously stole a car six years ago, we could use probation, but we could not do so if he had committed the offence four years ago. Or if he appeared today for stealing a car, and last year he appeared on a charge of common assault, we could use it a second time. These are the only cases where anybody but a first offender could be given probation. We repeatedly find persons coming before us who are very close to making it on probation and then some extraordinary circumstance arose and it was pretty clear that a second chance at probation was deserved by the person and he would probably be successful, but under the present legislation we could not give them that chance. So, we urge very strongly that the restrictions contained in Section 638 be lifted and, at the same time, magistrates be warned that they do not start being indiscriminate and handing out second, third and fourth probations to people who have proven they could not benefit by it. In point of fact, there have been studies which show that magistrates in various provinces are illegally giving second probations, and in many cases they are successful. Now, when say illegally, I do not know whether the magistrate is deliberately doing it or whether the previous conviction is not being brought to his attention, but certainly there are second probations being given.

The second problem that arises, of course, is that as soon as you convict someone and place him on probation he has a criminal record. I do not know how many times young people of 21 or 22 years of age have come back to me with tears in their eyes and said, "What can I do about that record I picked up when I was sixteen?" I find that the boy has gone back to school he has completed his school; he has gone to work; he started, let us say, at Loblaw's, and he is now in a position to be appointed as a cashier at Loblaw's, and suddenly he has to be bonded. The bonding company says, "No, you stole a car when you were seventeen and we cannot bond you."

Now, we wondered how we could deal with this, so we got together with the Probation Officers Association, which is another very large and very active association because they are dealing directly with the probationers, and we had a whole series of meetings. Simultaneously, as a matter of fact, a committee of The Canadian Corrections Association was dealing with the same subject and our findings and theirs are so identical in principle, although different in detail, that one could take them as being the same.

We suggest that the following be considered in Section 638 of the Criminal Code. Firstly, that the restriction, of course, be lifted against giving second probations but far more important, we want some extra remedies. We want to be able, where a person appears before the court—and I am summarizing to some extent here—in some cases to give what is known as an absolute discharge,

which will not amount to a conviction at all. Now, a typical case would be this. It is a very hot summer day. Two women are hanging out wash in their adjoining backyards and their children get into a fight and then they get into a fight, tempers are frayed, one of them slaps the other in the face and the one who is slapped charges the other with assault. There is nothing a magistrate can do under the circumstances, if a person has been assaulted without acting in self-defence, but to convict the poor housewife who will never commit another offence as long as she lives. The whole thing is so trifling that one would wish it had never come to court at all.

I can recall a similar case where a young boy who, early in September when school had just started, had picked up the books he needed at a bookstore and has stood in a line-up waiting for the cashier for nearly 45 minutes and was still only half way to the cashier when he yielded to temptation, put the books under his arm, left the store and was promptly arrested by a detective—they had more detectives than cashiers in that store—on the street. He appeared in my court charged with shop-lifting. He was a young man of outstanding character who had no intention of stealing until he kept looking at his watch and did not know what to do. So, in cases like that we would like to be able to absolutely discharge the person.

Now, there are types of cases where we think that a person should be given suspended sentence and required to remain on that sentence—

Mr. AIKEN: Mr. Chairman, may I interject on this question of absolute discharge. I am not exactly clear what you mean by absolute discharge. Could you apply it to the case of a young lad who was charged with shoplifting?

Magistrate SHERWOOD: Yes, we think the magistrate should use his own discretion as to where it is to be applied. The magistrate is the only person in a position to make a decision as to whether this matter is so trifling that it should not result in any further action whatsoever.

Mr. HONEY: The mechanics that you are suggesting is that in this case, if the Crown Attorney was not understanding and the boy was arraigned in court, then you would have the authority in the Criminal Code to say: "This is a trifling matter and I am giving you an absolute discharge".

Magistrate SHERWOOD: Yes, that is right.

Mr. HONEY: In other words, you would not consider the matter of guilt or innocence?

Magistrate SHERWOOD: You would not consider the matter of guilt or innocence at all; it would simply be as though it had never happened. The wording we have used is "absolute discharge", to be used where the offence was trifling and neither punishment nor probation is considered necessary.

Mr. HONEY: Thank you.

Mr. PUGH: Could it be used in a similar instance arising, we will say, within a couple of years? Would it go on the record?

Magistrate SHERWOOD: That one would never go on the record. It is utterly trifling.

Mr. PUGH: So therefore even if it was before the same magistrate and, we will say, the same RCMP or store detective was involved, it could never be made reference to at all?

Magistrate SHERWOOD: In the case where absolute discharge was used, yes.

Magistrate TUCHTIE: The magistrate is human; he will know it. You cannot expunge it off his mind, but he will ignore it. That is what he will do.

Magistrate SHERWOOD: I would like to develop this because I think you probably have to see the full picture before you start to tear it apart.

The second situation is where the offence is of sufficient seriousness that the person should be dealt with as an offender. If the decision, which seems proper, is that he be placed on suspended sentence for a period of time, that certain conditions be attached, but that he does not require the sort of concentrated rehabilitative effort which requires supervision by a probation officer, this would be known as conditional discharge. In other words, he will be freed of this offence provided he meets the following conditions. And one condition would always, of course, be that he not commit any other offence. In addition, one could attach other conditions. There are all sorts of them. One might well be, for example, that a person not enter any beverage rooms because he always gets into trouble when he goes in a beverage room. This may sound like a silly thing but, for example, there are a bunch of cheque forgers who victimize the habitués of beverage rooms by getting them to go out and cash forged cheques for them, and a poor old fellow, whose only weakness is drink, cashes a forged cheque for 10 per cent of the amount while the professional criminal, who took no chances, gets 90 per cent. So all that is perhaps required in this case is that he stay out of a beverage room. The police are aware of these conditions and if they see him in a beverage room it will be reported back to the court. He appears on a violation of his condition and is then dealt with.

The third case would be one where it was felt that supervision was needed in addition to various conditions. These are cases where, due to lack of home background, parental problems, and so forth, it is felt that the person needs the counselling and help not only of the probation officer but of other community agencies, and your probation staff, hopefully, are working closely with family service agencies, children's aid societies, youth counselling organizations and so forth. You may also in these cases attach all sorts of special terms such as, for example, attending a mental health clinic if there seems to be a minor mental health problem which does not pose a problem to the community. A good example is the person who is convicted of indecent exposure. He is not a dangerous criminal in any sense of the word. It is almost unknown for them ever to attack anybody. Imprisonment does not seem to be of any assistance to them whatsoever and, given psychiatric assistance, they usually can be rehabilitated at home. However, the supervision of a probation officer is required to see that he is attending his appointments, to see that his attitude is changing and to help him.

We also felt that we would like the power—and again the Canadian Correction Association go along with us—in the case of first offenders who plead guilty or who plead not guilty and against whom a charge is subsequently proven, to place them on either conditional discharge or probation without at that time registering a conviction. So that if he is a first offender and he has yielded to the temptation to take part in the theft of a car to go for a joy ride or

something, we would like the power to say, "All right young man; you are placed on suspended sentence and probation for two years." Or for three. We think that the two years, presently in the code, is too short; we want to extend it to three. The conditions of this are such that if he does not commit any other offence or violate any term of his probation—we may tell him he may not associate with certain people or frequent certain places; we are trying to remove the sources of temptation from him—and successfully completes his probation, then he will at that time, in effect, be absolutely discharged and no conviction will be registered against him.

I do not know the number of young people today in this province—I do not think anyone could provide the figure—who have committed one crime, particularly between the ages of about sixteen and nineteen, under circumstances of temptation, or being called 'chicken' or just yielding for a moment to temptation, and have never committed another crime. This is why I said earlier that we are aiming at the removal of the creation of the criminal record in the first place; the youngster has made one mistake and is obviously never going to make another one.

Magistrate TUCHTIE: Can I say something now?

The CHAIRMAN: Yes.

Magistrate TUCHTIE: Is Section 17 on threatening?

Magistrate F. C. HAYES (*Second Vice-President, Ontario Magistrates Association*): Section 17.

Magistrate TUCHTIE: Yes. We now have in the Criminal Code a threatening section, whereby it is not necessary to convict the person. You can stop listening to the evidence at any stage that you want and place him on a bond and do various things with him without actually registering a conviction.

Magistrate SHERWOOD: That is correct.

Magistrate TUCHTIE: This is what we would like to do, particularly for the young people who, as Magistrate Sherwood said, will never do it again. That would be one way of giving him an absolute discharge right there and then we would not have to worry about expunging his record.

Mr. HONEY: You say that is in the code now, sir?

Magistrate TUCHTIE: No, only in the one that is 'threatening'—not any other large.

Mr. HONEY: Oh, just the one charge.

Magistrate TUCHTIE: And we would like to have that generally.

Magistrate SHERWOOD: Now, if the code were changed to permit us to use probation without at that time convicting, then certain other things would have to be done. And now we are approaching Mr. Tolmie's bill much more closely.

First of all, one would have to make sure that dispositions by courts, involving probation without conviction or conditional discharges without conviction, would be available only to a magistrate or judge dealing with this person in connection with a further criminal offence. If criminal records, including conditional discharge or probation without conviction were printed and distributed indiscriminately, the whole purpose of avoiding the criminal record would be

frustrated. At the same time it is perfectly obvious, I think, that a record must be kept somewhere, otherwise a person could go from coast to coast in this country and continually be treated as a first offender because in each jurisdiction the magistrate, thinking he was a first offender, gave him a chance to have probation without conviction. So our suggestion is that either the offender or his lawyer should ask that he be given the benefit of probation without conviction, that there be a waiting period and that the court then ask the RCMP to check the confidential file for the sole purpose of finding out whether this offender has ever before been given the benefit of probation without conviction. Obviously, if you simply destroy the record, we would never know; a person can be continually treated as a first offender.

We feel that there are a couple of other corollaries to it. We think that a person who has been placed on probation without conviction and has successfully completed his probation and, therefore, has had no conviction registered against him, should by law be permitted to take an affidavit, if necessary, that he has never been charged with or convicted of a criminal offence, because an awful lot of employers ask this question in their application form. In fact some employers just ask the question: "Have you ever been charged with a criminal offence?" which I think is a dreadful question to ask, which should never appear in any application form, and should be prohibited by law because many innocent people are charged—I hope they are not convicted—because of mistaken identity or other reasons. This is a dreadful thing. We want a person who has avoided a record to be free to make an affidavit to the effect that he has never been charged with or convicted of a criminal offence.

Now, we follow on from this. We have been dealing up until now with the person we place on probation and the decision, as I indicated earlier, whether to use probation or not, depends largely on the background of the person and the offence he has committed. Two young men may both appear for stealing a car. One may be a good probation risk and there are all sorts of people willing to help him. So we place him on probation. He rehabilitates himself and becomes a good citizen, and never commits another offence. If a provision were put in the code to cover probation without conviction, he would never acquire a criminal record. He may have been jointly involved with another person in the theft of this car. However, in the other person's case, one finds that the father is an alcoholic, the mother is a prostitute, there is not an aunt, an uncle, a cousin, or anyone willing to help this young man. Because of the conditions at home his choice of associates have been the worst you can possibly imagine, and it is perfectly obvious that no probation officer can possibly devote enough time to rehabilitate this young man, if you are going to put him right back into the environment that he came out of. So, either by reason of the seriousness of his offence or because of this background problem, you sentence him to reformatory. This is simply an alternative method of rehabilitation, and we feel very strongly that if a person placed on probation should be allowed some way to avoid a record, then the person who successfully rehabilitates himself after going to reformatory—and, gentlemen, you have never seen a better example, I think, than the one that was revealed within the last 24 hours—should have an equal right to have his record erased because he has done, in reformatory, exactly what the first person did on probation; he has changed his whole way of life. I agree with what Magistrate Tuchtie has said, that again

you have to keep a confidential record if you are going to expunge because, otherwise, a person every 12 years—or every five years or whatever period you wish—could ask again to have his record expunged, if you simply destroy it. We feel that those people also, once a record has been expunged, if you do approve this bill, should be permitted by law to take an affidavit stating that they have never been convicted or charged with a criminal offence because, otherwise, in a round about way their employer finds out. They put the man in a position where he has to make a false affidavit or reveal his wiped out conviction. That is a pretty difficult choice to make.

Now, I think those are the main things that I wanted to submit and, if you will hold your questions for a few minutes more, Magistrate Hayes wants to speak on one other aspect of Mr. Tolmie's bill.

Magistrate TUCHTIE: Yes. Is that not Section 2?

Magistrate HAYES: Yes. Mr. Chairman and Members, following the view of the Ontario Magistrates Association, dealing more particularly with the reference in subsection 2 of the proposed amendment with respect to the age of 21 years when some action may be taken with respect to this matter, it is our opinion that 21 years does not hold any particular magic in the criminal law and that if we are to follow the pattern which has been developed in our submissions, we should be in the position of looking at, shall we say in a crime of violence, the age group of 17, 19, 20, who have received sentences of 2, 3 or 4 years for armed robbery and who immediately upon their 21st birthday are in a position to have that expunged.

The other reason for not placing any limit on age or making age a dividing factor, in our submission, is that people fall from grace, so to speak, at many ages. I am thinking of a housewife who, through pressures which develop at home or for many reasons, goes in and picks up a tube of toothpaste or something, is charged with theft under the value of \$50, and has a criminal conviction at age 54. We believe that this sort of thing can still be dealt with in the framework of the submission which we have made. So it is our view that age is not necessarily a dividing line in the Criminal Code. There is an age of criminal responsibility, but their conduct and how they hold themselves out to society, having rehabilitated themselves, is acceptable—in other words if they have indicated to society that they are rehabilitated, then they should be granted the freedom of not having a conviction, and they could be dealt with in the classifications which we have submitted. When a person appears the second time on an offence and you are unable, within the law, to place them on probation, it is very difficult to envisage what is going to happen to that person as a result of not having the extra benefit of probation the second time. It is not the fact, if the records are kept, that you will not know that there has been a previous incident, but you could have a conviction for theft and then something of the common assault variety that Magistrate Sherwood indicated, and there would be a second criminal conviction—or it could be of the same type. Therefore, let the pattern flow irrespective of age; if they demonstrate their ability to rehabilitate, let them be free of that previous history. Thank you.

The CHAIRMAN: Thank you Magistrate Hayes.

Magistrate SHERWOOD: Could I add one thing.

The CHAIRMAN: Certainly.

Magistrate SHERWOOD: I want to be abundantly clear. The suggestion of probation without conviction is applied to first offenders only, but we would not restrict the expunging of criminal records to persons with one offence only. I do not think I made that clear earlier, and I thought I should make it clear now, Mr. Chairman.

Magistrate TUCHTIE: Is the intention of the bill that when a person has a conviction at 20 years of age, within one year he is deemed to have no record?

Mr. TOLMIE: Mr. Chairman, I will remark upon that. This point concerning attaining the age of 21 and then having the record expunged, on further consideration, is not valid, because it could happen that a chap could be convicted when he is 20 and at 21, according to the bill as it is now proposed, he would have the record erased; therefore this is something in the bill which will have to be changed to eliminate that.

Magistrate TUCHTIE: We feel, as has been explained by Magistrate Hayes, that there should be no distinction. A chap who commits an offence at 16 should also have 5 years or whatever it is before it is expunged. If you just let it go on and he is rehabilitated, and if he worries any, he will have it expunged, but if he does not rehabilitate himself he may commit a number of offences before he is 21, and then to have it all expunged at 21 would be not in keeping, I think, with what we are trying to do.

The CHAIRMAN: You were discussing the report of the Probation Committee of 1964.

Magistrate SHERWOOD: That is right, and the material part starts at page 3.

The CHAIRMAN: I was going to suggest to the Committee that they approve that it be appended to our proceedings of today so that it will be printed as part of the record. Would someone please make that motion.

Mr. AIKEN: I so move.

Mr. MANDZIUK: I second the motion.

Motion agreed to.

The CHAIRMAN: That will be an addenda, and this other material on Suspended Sentence and Probation will be an exhibit.

I believe Mr. Wahn has a question, followed by Mr. Aiken, Mr. MacEwan and Mr. Choquette. We will leave the sponsor to the end.

Mr. WAHN: I have a question I would like to ask of Magistrate Tuchtie. Sir, you said you thought it would be desirable to expunge the record, on application, after say, five years, rather than having it expunged automatically because, as I understood it, you thought it would be an advantage to a man to have a certificate which certified that he had rehabilitated himself. Would your objection be met if the expunging of the record were automatic after five years, but a person is still entitled, if he wishes to apply, to such a certificate? It seems to me there might be many people who would not want to run the risk of having people in the community know of this earlier conviction by having an investigation made.

Magistrate TUCHTIE: Well sir, one of the things that will happen is that a great number of people will be going around and saying: "I have no record" dishonestly, unless there is some specific process he has to go through. For instance, a great number of convicts would be coming out and saying: "I have no record". Then it is proven he has, the five years has not expired, and he says: "Well I forgot that; I thought it was earlier." I think there would be an inducement to say: "I have no record" when, in fact, he has and it has not been expunged.

Mr. WAHN: But clearly there are advantages and disadvantages to both systems.

Magistrate TUCHTIE: Yes.

Mr. WAHN: It is a question of weighing the advantages against the disadvantages.

Magistrate TUCHTIE: Perhaps you could make it secret enough. You just do not indiscriminately send it to some department; there may be some special person appointed to whom you could send your personal file and make a request to have it expunged. I imagine it could be kept secret and, if so, then I see no risk at all.

Mr. WAHN: Would you be entitled to it automatically on having gone for five years, or would there be an investigation by the police or by social service workers?

Magistrate TUCHTIE: No, because the person who is going to decide and grant this would immediately go to the records department and ask for a record of Mr. Tom Brown. After having obtained the record, the exact date is on file and that person will know the five years are up.

Mr. WAHN: It was suggested by Mr. Street, when he appeared last week, that in addition to acquiring an application for the expunging, there should also be an investigation of the life which is now being led by the person. It seemed to me there might be some objections to that, because that type of thing you could not keep quiet.

Magistrate TUCHTIE: No, I would not do that, because then it would vitiate the very object and the spirit of it.

Mr. WAHN: You would then issue the certificate upon proof of only one thing, that five years had elapsed—

Magistrate TUCHTIE: That is correct.

Mr. WAHN: —since the date of the last conviction. Then you would not destroy the record; it would be kept in a confidential file and if the man, at a later date, committed a serious offence, the record could then be reactivated?

Magistrate TUCHTIE: That is correct.

Magistrate SHERWOOD: Yes, and in addition to reactivating the record, the magistrate is presumably going to order a pre-sentence report in which the probation officer is going to trace the whole history of this person from the date of any previous pre-sentence report, or his whole life if there was not one. Therefore, in the event of a further offence, the magistrate will have the previous record and the investigation at that point will be made if necessary,

because the man has offended again. If he has not offended again, we do not think there should be any investigation.

Magistrate TUCHTIE: That is right.

Magistrate SHERWOOD: This just serves to alert a lot more people in the community that the man has been in trouble once.

Magistrate TUCHTIE: There should be no investigation.

Mr. AIKEN: Mr. Chairman, I think, at the beginning, the Committee in general favoured the principle of this bill. One of the things that really causes us difficulty is the question of application forms that are made out for emigration to other countries for employment, for bonds and so forth, which these people run into all the time. One of the witnesses has produced a form used by the American Immigration Authorities and not only do they ask, "Have you ever been convicted?" but they also ask, "Have you ever been paroled?"; "Have you ever received a certificate of pardon?" and so forth. It would be a very simple thing to add to that form, as a supplement, to the first question, "Have you ever received a certificate of rehabilitation?" Firstly, the thing that bothers me is that a person is actually telling a falsehood if he is asked if he has ever been convicted and he says "no". Secondly, even if he does tell that first falsehood, he has the second one to deal with and he has to answer "yes" or "no" as to whether he has ever been granted a certificate of rehabilitation. Have you any suggestions for getting around this problem? I think this is fundamental.

Magistrate SHERWOOD: First of all, we are running into the laws of two countries and this is the problem. Under our Criminal Code, it is a criminal offence to swear a false affidavit or to make a false declaration. We can put in the sort of legislation I suggested earlier, of permitting these people to swear that they have never been charged or convicted of a criminal offence and, therefore, they cannot be prosecuted under the law of Canada. Now there is no way we can change the law of the United States, Switzerland or any other country. When they fill in an immigration form seeking to go to the other country, no matter what we do, they face the consequences once they get to the other country of having violated the law of that country. I do not know how we can get around that, Mr. Aiken.

Mr. AIKEN: What about the question of bonding companies, where they ask similar questions. Is there any way of getting around that?

Mr. SHERWOOD: Yes, if we provide in the Criminal Code that any person whose record has been expunged may swear an affidavit or make a declaration that he has never been convicted, then the man has committed no offence and he is entitled to say to the bonding company: "I am clean". Now the bonding companies will not like this, but the man will have committed no offence.

Mr. AIKEN: Suppose the bonding company says "Have you ever received a certificate of rehabilitation?"

Mr. TUCHTIE: Supposing you say "yes". The bonding company does not know what it is for. You may have committed a sex offence which has nothing to do with your trust and worthiness of being able to look after money. Obviously the bonding company knows that it has been more than five years, and the person has been a good decent citizen.

Magistrate SHERWOOD: I would not deal with it the way Magistrate Tuchtie would. I would make it a criminal offence for a bonding company or any other person to ask the man whether he has ever been charged with a criminal offence and to ask a person whether he has ever had his record expunged or been given a certificate of rehabilitation. That is the way I would deal with it, and it should be put right in the Criminal Code.

Magistrate TUCHTIE: The reason I said what I did is that the bonding company insures this lad and then they find out later that he steals his employer's money and then they say: "Had I known, I would not have bonded him." Therefore, they might have a right of action. But if he tells them, "Yes, I have had a certificate; so what?", they cannot investigate it any further. If we do it the other way, we are subject to actions by the bonding company and they could say they have been deceived. The other way is to admit having the certificate and to say, "What about it; that does not mean a thing." There may be better ways of doing it, but I would imagine you gentlemen are hearing a cross section of many witnesses who may be able to give you a better solution to this problem.

Magistrate HAYES: Mr. Aiken, just dealing with general principles for a moment, I really appreciate the difficulty which you see with respect to the bonding company, but if after hearing a cross section of the country, legislation is introduced in this vein, is it not incumbent upon the other sections of the community to accept that legislation in the spirit in which it was enacted, namely, that when it was enacted all concerned thought it was for the benefit of the community. If asked, they can say "Yes, I have received a certificate of discharge." That will then end the matter, because that is the country's will and they will operate under that law.

Mr. AIKEN: I take it that it is the joint opinion that if a person obtains a certificate of rehabilitation he may say "yes" and that ends it; there can be no further inquiry—

Magistrate TUCHTIE: No further investigation and no record.

Mr. AIKEN: It may have been for riding a bicycle on the sidewalk, or it might have been armed robbery. I like this much better than other proposals, but how can you do me one better and come back to the first problem. I do not like to see a person swearing a false affidavit under legislation or otherwise. It is the old story about making it legally honest.

Magistrate TUCHTIE: As a matter of fact, in my humble opinion, Parliament can do anything. Parliament is the will of the people, as Magistrate Hayes has said, and if Parliament sees fit to say that the record will be expunged, then by law the person can claim to have no record. I think the person is entitled to that and should be able to do it. I do not think that is false at all.

Magistrate HAYES: I do not think I can cite a precedent at the moment, but the tax laws and various other statutes of this country have what are known as deeming provisions and this kind of a provision is, in effect, what is going to be enacted here, if it ever is enacted.

Mr. AIKEN: But I think we are dealing with two different classes of people.

Magistrate HAYES: Well, sir, at the time that he receives the certificate, we will have accepted him as not being in that previous class.

Mr. AIKEN: Thank you very much.

The CHAIRMAN: Mr. MacEwan?

Mr. MACEWAN: I just have a couple of questions. I was interested in this reference to Nova Scotia and the case of the young man, who was a town councillor in Waterford, Cape Breton, who had been convicted at an earlier age for joy-riding. Did I correctly understand what Magistrate Tuchtie said? Does he believe that there should be set out in legislation any different period of time for the expunging of the records in the case of this young man as against a more serious offense? Should there be any differentiation in that regard?

Magistrate TUCHTIE: My personal feeling in the matter—and I have no idea what other magistrates think about it—is that I think 12 years is too long and that five years may be too short. Somewhere in between there might be the right period; I do not know.

I think you would get into a tremendous amount of paper work if you tried to lay down that for one offence it be five years, for another six years and for another seven years, and so on. There should be one, in my opinion, from the standpoint of the mechanics of operating it. I think it would be too complicated if you made different judgments for different types of offences.

Mr. MACEWAN: Has the Magistrates Association agreed on a time period?

Magistrate TUCHTIE: No.

Magistrate SHERWOOD: No; we did agree on five years in 1964, but only because of what is presently in the probation section of the code relative to five years in the case of one offence; that is, section 638. We have no strong conviction, from a general point of view, that five years is necessarily the right time, but we are on record in that respect. This probation report that you have was unanimously adopted by our association at an annual meeting.

Mr. MCQUAID: May I ask a supplementary question about this, Mr. Chairman?

The CHAIRMAN: Yes.

Mr. MCQUAID: Would you consider differentiating, with respect to periods of time, between the youthful offender and the older offender? For example, we can imagine the case of a young "chap" aged, 16 or 17, in the heat of youth committing some not particularly serious criminal offence. Would you consider differentiating between the time for that offence being expunged and the one for the—

Magistrate TUCHTIE: Well, if we take it, as you say—not such a serious offence—as Magistrate Sherwood has suggested we do not convict him at all. We put him on probation. We do all those things so that he never has a conviction and therefore there would be no worry about expunging it. That is how we would treat the youthful offender if it were not a serious offence. Otherwise, if it is a serious offence, even as a youthful offender he should wait the period as does anybody else.

Magistrate SHERWOOD: This is partly why we think that Mr. Tolmie's 12 years may be too long.

More frequently one finds that it is the young offender who sows his wild oats—call it what you will—and somewhere between the ages of 16 and 20 may commit three or four offences. Then he meets a nice girl, gets married and settles down, and changes his whole way of life. Within a matter of four or five years, if he is an industrious and capable young man, he is reaching the position where he might be offered a bondable job. If he has to wait 12 years he can suffer great hardship in the extra seven, if you extend it to 12.

However, this is not always the case. Sometimes it is a “chap” who has matured late, and who, between 21 and 23, sows his wild oats. Therefore, we find it very difficult to choose 21 as a sort of arbitrary distinguishing age. That is why we would rather see the period shorter than 12 years and have it the same for persons in all age groups.

Mr. MACEWAN: What body or person do you gentlemen think—should hear these applications? You have said that you believe that it should be done by way of application. Do you think the National Parole Board would be the proper body to hear them, or what do you think?

Magistrate SHERWOOD: We do not think that an application needs to be heard. It simply requires one person to say, “Would you please check the official records and see.”

We are disagreeing with Mr. Street, in other words.

If you appointed, for example, a special registrar of criminal convictions, let's call him, he would be the man to whom to make application. He would just consult the file and if it was clear for whatever number of years you gentlemen determine, he would issue a certificate to the person saying: “Here is your certificate of the expunging of your criminal record.”

Magistrate TUCHTIE: If we had an ombudsman I would like to see that part of his office and somebody in his office doing that. That would be righting the wrongs of the citizens.

Mr. MACEWAN: What did you designate this official as?

Magistrate SHERWOOD: I think I said “special registrar of criminal convictions”. But the name is not important.

Mr. MACEWAN: Do you believe that he should be answerable to the Solicitor General of Canada?

Magistrate SHERWOOD: I would presume he would operate either under the Minister of Justice or the Solicitor General; probably the Solicitor General.

Mr. WAHN: Do we not have a central registry of convictions now?

Magistrate SHERWOOD: Yes, the RCMP has.

Magistrate TUCHTIE: I would not keep it at the RCMP. I would let the RCMP keep the other records that they have, but for this purpose I would have some special designated person.

Mr. MACEWAN: Mr. Wahn brought this out, but I just want to ask again: You do not believe that it should be necessary for any investigation to be carried out by the RCMP or by any of the agencies which now assist the parole board in ordinary parole applications?

Magistrate TUCHTIE: I think you would lose the spirit of the intention of this Act if you did that.

Mr. MACEWAN: I have one final question, Mr. Chairman. I was interested in Magistrate Sherwood's reference to section 638. As I took it, there were three different situations which he outlined. First, for very minor charges there would be absolute discharge; conditional discharge when an offence might be a little more serious and where other circumstances came in; and then, finally, what you might call probation, where you have to go just a little bit further and perhaps have a probation officer or other community agency look into a case. In those three there would be no criminal conviction recorded; is that right?

Magistrate SHERWOOD: If it was a first offence.

Mr. MACEWAN: Yes. Now, you said, Magistrate Sherwood, that this should be in the discretion of the magistrate. If the Crown officials did not agree would you still give the magistrate the power to decide this?

Magistrate SHERWOOD: The magistrate always has the power to decide. He hears the Crown and he hears the defence. The magistrate has the power now to decide, for example, whether a person convicted of armed robbery is going to be placed on probation or is going to be sentenced to life imprisonment. Therefore, we are not really asking for a great deal more power.

Magistrate TUCHTIE: Magistrate Sherwood has mentioned the Crown. It may want the charge withdrawn completely and not proceeded with. That is where the Crown has the choice.

Mr. MACEWAN: Thank you, Mr. Chairman.

Mr. PUGH: I have a supplementary on that, if I may ask it. If the law goes through as you suggest would this affect the jurisdiction of a magistrate? The magistrate says: "No; we are going to throw this thing out all together." Would whoever is prosecuting have a right of appeal against your decision, or would you decide...?

Magistrate TUCHTIE: We cannot do that. If the Crown proceeds we have to hear it.

Mr. PUGH: No; but under the law, as you suggest it should be amended? You have mentioned the less serious offence and the absolute discharge. A magistrate listening to it might say: "Well, in my opinion, the facts are a little rough here and there, but I know the situation completely in this case, and I am convinced that we should have an absolute discharge." Is it the suggestion that at that point, the magistrate's word would be final and that there would be no appeal against that?

Magistrate SHERWOOD: Oh, no. There should be an appeal from any decision of a magistrate through the normal channels.

Magistrate HAYES: That is, an adjudication would still be subject to the ordinary rights of appeal under the Criminal Code, be it a summary or indictable offence. If the Crown or anyone else who had a status to appeal differed with the adjudication of a magistrate, they would use the ordinary appeal provisions. Therefore, if that was exercised in large jurisdictions, which we are suggesting to an amendment of Section 638, any person with a status before

the court could still appeal to the Court of Appeal—for trial *de novo* on summary conviction—to have that adjudication reviewed in the ordinary appeal procedure.

Magistrate TUCHTIE: You cannot deprive it of the appeal part. I think it should always be there. Regardless of, whether it is a magistrate's court or a judge's court there should always be the right of appeal by either side, because people do make errors, you know; otherwise we would not have courts of appeal.

Mr. PUGH: I was only trying to point out this sort of parental authority, you might almost call it, which magistrates would be assuming in cases of the young offenders. It would seem to me, of course, that it would be a very harsh thing for any prosecutor to say: "Well, the magistrate has erred, in throwing this thing out altogether."

Magistrate TUCHTIE: Oh, they do say it; they sure do. I have heard it. I might, sir, that this idea that is propagated there is also, I believe, the practice in Great Britain, whereby the magistrate has the power to say that he will not find the accused guilty, and will put him on certain conditions, and if he obeys them no record is ever made. That is being done right now in Great Britain.

Magistrate SHERWOOD: And in many Scandinavian countries, yes.

Mr. PUGH: I actually meant this other conditional one which you suggested.

Magistrate TUCHTIE: That is right. In other words, the man is not guilty at all, but there are imposed on him certain conditions which come really under the probation idea.

Magistrate HAYES: Perhaps I might just enlarge on it a bit, if I may, Mr. Chairman. When the court suspends the passing of sentence under section 638 we are not relieving that person of being sentenced on the original charge. If it was a conditional discharge, as Magistrate Sherwood has indicated. We are still advocating that if he breach any of those conditions he might be brought back and sentenced. First of all, the breach can be noted under the provisions of section 639 of the code. He can then be brought back on a breach of that condition and sentenced on the original charge.

Mr. PUGH: This might be known as the second chance?

Magistrate HAYES: Yes. That is the procedure now if you have put a person on probation. You may say to them, in addition to other things: "We want you to understand that if you breach any of the terms of your probation, or conditions, you may be brought back to this court and sentenced on the original charge."

Mr. PUGH: Well, this is what I wanted to know.

The CHAIRMAN: Mr. Pugh, you are on your first round of questioning.

Mr. PUGH: I am sorry.

The CHAIRMAN: You will have a second chance. Mr. Choquette?

Mr. CHOQUETTE: All my questions are supplementary.

(Translation)

I have only two short questions. Mr. Street, the Chairman of the Parole Board expressed concern that there might possibly be some leakage of informa-

tion if the records were not destroyed. Do you share the concern expressed by Mr. Street?

(English)

Magistrate TUCHTIE: I might say that I do not. With proper supervision those records can be kept in a certain place and nobody will know what is in them. Only people such as the Courts should be entitled to know what is in those records, if it ever arises. I think there is no question but that that can be done, under proper supervision.

(Translation)

Mr. CHOQUETTE: In other words, you are confident. There is another question. Would it not be possible to establish two stages or phases, as follows: in the first, the records would not be destroyed, but there would be no possibility of referring to the previously committed offence; and in the second phase, after a certain number of years, let us say twelve or fifteen years, the record would be destroyed. In other words, after five years, no reference could be made to the record; and after fifteen years the record could be destroyed completely. Would this be a possibility?

(English)

Magistrate TUCHTIE: What happens at the end of the first five years? Can he make an affidavit and tell his employer he has never had a record? Can he do that? If he can, what is the object of keeping it at 15?

(Translation)

Mr. CHOQUETTE: What I mean is that you seem to be against it; you seem not to favour the complete expunging of records. Is that correct?

(English)

Magistrate TUCHTIE: No, I am in favour of completely expunging the record.

Magistrate SHERWOOD: Excuse me. I think there is a problem between "expunging" and "destroying". Let us suppose that a person appears before the court at the age of 50 charged with several indecent assaults on little boys. It may be very important for the court to know that 20 years ago that man was also having trouble because he was assaulting little boys. It is of immeasurable assistance to the court in determining just what kind of a problem we have and how it is to be dealt with and that is why we do not want the record destroyed. We want it available only to the judge or court who may later have to deal with that man, but to nobody else.

Magistrate TUCHTIE: And now he would not be treated as a first offender, as he would be if you had destroyed the record and kept no copy.

(Translation)

Mr. CHOQUETTE: Thank you, sir.

(English)

Mr. TOLMIE: Mr. Chairman, I would first like to congratulate the magistrates. It has been very refreshing and very encouraging to see magistrates so interested, not in punishment but in rehabilitation. Frankly, I feel that if these gentlemen are representative of the magistrates of Ontario, that as far as

justice is concerned we are in very good shape. I thought that should go on the record. I was very impressed; not because it is my bill but because of their interest in this whole concept.

The CHAIRMAN: I agree with you, Mr. Tolmie.

Mr. TOLMIE: I should also say that I do not expect for a moment that this bill as it presently stands will be implemented into legislation. The main purpose of drafting the bill was to get the principle before Parliament. Sometimes, if you wait until you get the exact and precise clauses drafted, you never get any principle before Parliament.

With regard to the 12-year period, I also feel it is too long. I placed that segment in the bill because I could always decrease the length of time. As far as the distinction between infants and adults is concerned, your arguments made a lot of sense and this, of course, is why we have various witnesses.

The big question which has bothered me is the cleavage of opinion—and there is a real cleavage of opinion—as to the automatic expunging without investigation, what we call judicial expunging. In other words, the bill as it is now presented incorporates the first principle, automatic expunging after a certain period of time. The assumption is that if a man has a clear record, regardless of what he might be doing—we do not investigate that—then he is entitled to have his record expunged.

One argument for this type of legislation is that in many cases a lot of people would not apply—they might not know about it—so they would not get the benefit of it. They might even forget that 20 or 30 years ago they had a record, and when they apply for a position they say they do not have a record, and it is found that they have. So, if it is done automatically this takes the onus off the applicant.

However, this emphasis on the right of the individual is perhaps opposed, to a certain extent, to the safety of society. This is the other version which has been propounded by a number of witnesses. I think there is a fair amount of argument for the other side, and it is simply that it would be indiscreet to just automatically review the case. Perhaps the applicant has had five or six convictions, and when automatically after 10 years it is wiped out without some investigation to see with respect to his mode of conduct, whether he is consorting with known criminals or whether he has actually rehabilitated himself. This is a strong argument. Frankly, I have wavered, I am trying to make up my mind and your evidence certainly has been very helpful to me, and instinctively and automatically I felt that the automatic expunging after a certain period of time was right because this is the whole spirit of it.

I have spoken to the Solicitor General and other people about this matter, and the big obstacle to a judicial review is the fact that it is being reviewed. It rings up the whole investigative process and no doubt in a lot of cases it reveals a record which has been concealed for years, so it destroys the purpose of the whole legislation. Therefore I am very interested in hearing your comments, being that you—according to the interpretation of the evidence you have given—favour automatic expunging. In other words, you would set up, for instance, a Registrar General who would check the records, and if the case came within the legislation that automatically it would be expunged.

Magistrate TUCHTIE: Mr. Tolmie, I do not know just how you are using the term "automatic". My opinion has been that you did nothing, and after a period of five years the fellow would say to himself, "I have no record." I do not think you mean it that way, do you? I thought you would still ask the person to apply and get a certificate. It is the investigation part of it that we do not want.

Mr. TOLMIE: This is what I wanted to clear up. You would put the onus on the applicant to apply?

Magistrate TUCHTIE: Yes.

Mr. TOLMIE: Then, once he applied—it would perhaps be to an office such as the Registrar of Criminal Records—his case file would be taken out and if his record complied with the conditions of the legislation, then automatically it would be granted and he would be sent a certificate?

Magistrate TUCHTIE: Yes, that is right.

Mr. TOLMIE: If a certificate was sent to his home might this not also reveal his past? Perhaps he has been trying to conceal it from his wife and his family.

Magistrate TUCHTIE: What will the certificate say?

Mr. TOLMIE: Well, it might say something to this effect, "You no longer are deemed to have committed an offence". It would have to say something or you would not send it.

Mr. McQUAID: Why could it not say that you have no criminal record?

Mr. TOLMIE: Well, this is fine. This is what I wanted to hear.

Magistrate TUCHTIE: You see, that is detail we had not covered, but the certificate could state that you are a first-class citizen and that you have no record.

Mr. AIKEN: Or that you are still not serving your original sentence.

Magistrate TUCHTIE: You would never send it to him if he was.

Magistrate SHERWOOD: Mr. Chairman, you might note that our recommendation is five years after the offence or release from sentence, whichever occurs first, because we feel there should be a five-year period of living in the community, during which time no offence was committed.

Magistrate TUCHTIE: He must prove himself.

Magistrate SHERWOOD: I quite appreciate Mr. Tolmie's dilemma. We are not concerned now with the highly intelligent person who has committed an offence. He is going to know what the law is, he is going to know how to make application and he is not going to get in trouble. We are concerned with the not very intelligent fellows who commit offences, and by and large this is by far the greatest body of offenders. If you look at the statistics from the Department of Reform Institutions you will find the average education, I believe, of the inmates in these institutions is around grade VII or grade VIII. These are the people we are seeing every day.

I still think a person who has a criminal record and has gone straight for five years is not going to forget to make application. If a man has gone straight for five years—at least any I have ever met—the one thing that is paramount in his

mind is, "My God, I still have this record." Every one of them is going to know that he can apply, and he is going to apply.

Magistrate TUCHTIE: The grapevine will circulate faster than anything you can imagine.

Magistrate SHERWOOD: We are much more concerned if he is not very bright, and if it is a purely automatic thing, that he is going to miscompute the period and is then going to start making false statements to the effect that he does not have a record, when in fact it is five or seven or nine or whatever the number of years it is that are not up. That is why we would like to see him write in and make the application.

Magistrate TUCHTIE: I was just going to add, Mr. Tolmie, that the reason I do not think an investigation is necessary is that if a person is associated with criminals he will be back in there long before the five or seven years are up. It is obvious that if he has not committed another offence in that five or seven, or whatever number of years it is, that is *prima facie* evidence that he is leading the proper type of life in the community. Otherwise he would be caught.

Mr. TOLMIE: Perhaps a compromise figure between five and twelve years might satisfy both positions.

Magistrate TUCHTIE: The longer period would prove that he had rehabilitated himself and there would be no need for an investigation. I think that would support non-investigation.

Magistrate HAYES: Mr. Chairman, referring to the item of non-investigation, no doubt some of the prior evidence with respect to investigation has been in respect of investigation which is made prior to release on parole, where a community report—if I may use my own language for the moment—is sought on the person and where he is going. In our view, speaking against investigating, there is the lapse of time that he has not repeated, there is your concern with respect to the responsibility to society for not having investigated, and if this man comes back and repeats—because records are kept—he will still be dealt with as a second offender and he will be dealt with in relation to society on that basis, and that information will be available to the courts.

Mr. AIKEN: Mr. Chairman, I have a supplementary. Would there be a routine check by the magistrate in every case to determine whether or not this is a second offence? Under what circumstances would you permit the previously expunged record to be brought forward? I would think it would have to be something more than merely a second offence. Otherwise you would have to check every time you entered a conviction.

Magistrate SHERWOOD: Mr. Chairman, I should think it would have to be a very serious offence which is causing you great concern in the matter of sentence. If it is a minor offence I do not think you would really care whether the fellow had been in trouble 15 years before or not. There is no easy sentencing case, this is the hardest job we have to do, but probably the hardest of all are the sex offenders. I think in such cases the court would request that a check be made before sentencing.

Mr. AIKEN: Then there would be no checking of the record except by a special order of the magistrate or judge?

Magistrate SHERWOOD: That is correct. The magistrate or judge should make the order from the bench and the return should be made directly to him and marked "Personal and Confidential".

Mr. AIKEN: Thank you.

Magistrate HAYES: I think in order to properly sentence the person before you that you would tend to exercise your discretion in asking for that check.

Mr. AIKEN: Unless there was a special order, you feel it should not be done in any other case.

Mr. HONEY: Mr. Chairman, I just wanted to ask one or two questions. I am still not convinced on this, although I appreciate your argument on the matter of the certificate. I think where we get into the most trouble is in respect to the problem that Mr. Aiken raised of an application to a bonding company, or some such matter, where the person requiring the information probably quite properly wants the information. I think there is an overriding case of the public good—if I could call it that—where we should say that you must not go behind this information. I think probably that has to be done by provincial legislation on the question of discrimination, and so on. I can see the application form of a bonding company reading, "Have you ever been charged with a criminal offence?" The second question is, "If so, do you have a certificate of discharge?" It is all right to say, I suppose, that bonding companies should go along with the spirit of the legislation, but the fact probably is that even if you say you have a certificate of discharge they now have the undoubted right under our legislation to refuse you the job.

I would first like to comment on whether or not we could appropriately and reasonably except the provincial legislatures to say that in these circumstances it would be an act of discrimination to refuse employment to a person on that basis, the same as it is now discrimination to refuse employment on another basis, at least in the province of Ontario.

Secondly, whether we might not get around this problem by changing the wording of Mr. Tolmie's bill, which now reads, "be deemed not to have committed the offence" to, "be deemed not to have been charged with an offence", so that at the end of the five or seven years, or whatever period it is, on the basis of this legislation the man could make an affidavit—and there might have to be something supplementary in other legislation—or could honestly say to the question, "I have never been charged with this offence". So, this gets around the problem of a questionnaire which reads, "Have you ever been charged with an offence?", which one of you gentlemen have already raised.

Now, I just throw those two thoughts out for your comments.

Magistrate HAYES: I certainly appreciate this problem about the affidavit that Mr. Aiken has mentioned, and I think it is quite a hurdle. However, let us say that we get down to the position where the man says, "Have you been granted a certificate of discharge?", or whatever language you want to use, and the applicant for the job says, "Yes". Now, there is nothing to stop the employer from saying "well, I know that I am not entitled to go behind that but do you, the applicant, of your own volition wish to reveal it to me?" That is still open to the applicant for the bonding, and that could be the applicant's decision. In my respectful submission where better should the decision lie than with that person. Does he want to reveal the nature of the offence or does he not.

Magistrate SHERWOOD: With respect, Mr. Chairman, I would like to disagree with my brother magistrate. We are obviously unrehearsed!

The bonding company, having found that a certificate of discharge has been granted, proceeds to find some other actually untrue basis for refusing to bond the person, and I think the damage is done as soon as the bonding company knows about it. I do not see why under our criminal law it should not be made an offence to require a person to answer a question as to whether he has ever been granted a certificate of discharge or not. If the criminal law provides for the certificate of discharge—if that is what it is going to be called—then make it an offence for requiring a personal answer to that question. Otherwise you are back to the dilemma that haunts every convicted criminal in this country, whether he has committed one crime or two, it is the dilemma that faces him every time he applies for a job, do I tell the employer or not? If he does tell the employer which he generally does not 90 per cent of the time he does not get the job. If he does not tell him and the employer finds out later, he is probably going to get fired. This is a spectre that haunts every person who has ever served time. So, I do not think that once he has received a clean bill of health and we have said, "You are a good citizen again and you are deemed never to have been charged with an offence", I do not think under our criminal law anyone should be permitted to ask him that question.

Mr. HONEY: Well, I wonder if the matter could be solved by saying that after five years—and I am not satisfied in my own mind on the length of time, but we will not get into that—there should be a certificate of discharge. I feel that it should be automatic. That after a period of time the legislation will say that this man shall be deemed not to have been charged with the offence. I think this would then simplify the problem that we have in employment and with bonding companies, and when he is asked the question, "Have you ever been convicted of a criminal offence?" he may answer, "No" to that.

Now, I think the bonding company has the right to have this information. If this occurs during the period before he gets his discharge, I think it is proper that he should have to answer, "Yes", but if we give him legislative authority to answer, "No" after he has been discharged, then I think this overcomes many of our problems. With respect, I think we are getting too technical when we talk about certificates of discharge and how we are going to answer those questions. That is my submission.

Magistrate HAYES: I might add—and I do not choose to reply to my brother magistrate—that in anything we are saying, Mr. Chairman, we are really here to discuss it in principle. With respect to many of these details—and I am sure you appreciate from our differences of opinion that we did not have an opportunity to sit down and work on it—we are in agreement in principle, and I am sure you gentlemen will hear many people with respect to the details of how it may come about.

Mr. AIKEN: May I ask a supplementary, Mr. Chairman?

The CHAIRMAN: Yes, Mr. Aiken.

Mr. AIKEN: I would like to try something out here. Do you foresee the possibility of an amendment to the Criminal Code or the Canada Evidence Act to the effect that no person is required to answer a question concerning a previous

conviction unless it is in the following words, "Have you ever been convicted of a criminal offence for which no certification of rehabilitation has been issued?" Would this not be a fair answer to the problem? They can only ask, "Have you ever been convicted of a criminal offence for which no certificate of rehabilitation has been issued?" In that case they can answer "No" and that is the end of the inquiry. It could also be prescribed that no other question can be asked in regard to previous criminal records.

Magistrate SHERWOOD: Mr. Chairman, that would solve the problem of the employment questionnaire but it would not solve the problem of the Evidence Act. At present, if I understand the Evidence Act correctly, you cannot ask a witness, "Have you ever been convicted of a criminal offence?" The only way you can question him is by saying, "Are you the same John Smith who was on such and such a date convicted of such and such an offence?", in which case the witness is required to answer, and he will have to face the problem of what to answer if his record has been expunged.

Magistrate TUCHTIE: Well, you are getting into the scope of the Canada Evidence Act. There are so many other facets to it, and if you have introduced that one I do not know just what effect it will have on the whole thing.

Mr. AIKEN: Well then, perhaps if they put it in as a clause to Mr. Tolmie's bill—

Magistrate TUCHTIE: Yes.

Mr. AIKEN: —and leave the Evidence Act alone. I was just trying to find some place to put it.

Magistrate TUCHTIE: Yes.

Mr. AIKEN: Maybe there is a place.

Magistrate TUCHTIE: You could put it as part of this bill, could you not?

Mr. AIKEN: It could be, yes. If this question could be asked for any purpose, then—

Magistrate TUCHTIE: I think you could fix the wording if you put in this act, and then have a separate section saying that no question should be asked except the following.

Magistrate HAYES: Provided the Evidence Act was amended to read, "Subject to the provisions of so and so."

Magistrate TUCHTIE: Yes.

Mr. AIKEN: The thing that still bothers us is to pass a legislative provision where a person can tell an untruth. Your comments point out the possibility of a person misunderstanding what he can lie about.

The CHAIRMAN: Mr. Pugh and then Mr. McQuaid.

Mr. PUGH: Well, I will start off by asking you, Mr. Chairman, if any bonding forms for employment have been submitted to us?

The CHAIRMAN: No, I do not think so.

Mr. PUGH: Do you think it would be a good idea if we could get forms from say, three or four bonding companies—the larger insurance companies—and examine them to see what the questions are?

The CHAIRMAN: I think that is a good idea. Mr. Ray will look after it.

Mr. PUGH: Mr. Honey brought out the point, of course, very well of the duality of magistracy up there and the pros and cons. It seems to me that this is a question which we must go into most thoroughly; the meaning and effect of the certificate of discharge. Is it absolute? Should it be used in regard to the obtaining of employment or does it have any other use in society where, if a man answers truthfully, he must say that he has had a previous conviction? Does this five, seven or nine year certificate cut it out altogether?

I would not go further than that, other than to say that throughout the years rehabilitation has been before certain bodies in Canada, the John Howard Society, obviously the Magistrates' Association and a great many other church bodies as well, who have advocated that we must make rehabilitation work from a human point of view. In other words, the man who is ready for rehabilitation—which occurs the day he walks out—must then be given every assistance from society itself to bring him back, we will say, within the fold. This is the crux of the whole situation to my mind. In the matter of the giving of a certificate, if an employer does not want to employ a man or is a little leery about it, then obviously he has not been brought to the point in society which the John Howard Society and many, many other associations throughout Canada would like to see him. There are many employers who have made the point that they will take on a man with a previous record, and I do not think that very many of them have suffered as a result of this. There are several employers that I know of who have hired a very large percentage of people with previous records, and there have been no backfires over quite a number of years. One of these is a fairly large firm in Montreal.

Now, I have one suggestion to make concerning the suggestions put forward on the granting of this five year certificate. It is the question of whether he should apply for it or not. I would say that automatically at the end of five years that certificate should be granted and kept in a central registry and be available on application to any man who wants it. In other words, at the termination of five years, whether he has forgotten the date or not, that certificate is there and he can use it.

Magistrate TUCHTIE: The reason I would not do it automatically sir, is that supposing I am now residing in British Columbia under the name of Tom Snooks and I am committing all kinds of offences and getting away with it, there may be a record under a different name, and so on, and the result of it is that unless the person applies you may not get the proper picture.

Mr. PUGH: Well then, you are in favour of some form of inquiry being made at the time?

Magistrate TUCHTIE: No.

Mr. PUGH: Then how are you going to find out about this?

Magistrate TUCHTIE: Well, if the fellow makes an application I would say, to start with, that he intends to do what he has been doing, and that is keep a clean record, and I think if you have an investigation you are going to spoil the whole thing.

Magistrate SHERWOOD: Well, to really answer your question, the RCMP checks things out by fingerprints and it is not at all unusual for a magistrate to be

handed a criminal record which indicates: Vancouver, British Columbia, breaking and entering, two years, Oakalla Prison Farm, under the name of John Smith.

Mr. PUGH: Yes.

Magistrate SHERWOOD: New Westminster, a conviction under another name and somewhere in Manitoba a conviction under another name.

Mr. PUGH: I am glad you got out of B.C!

Magistrate SHERWOOD: He can go anywhere, a man can go from coast to coast and this is why we think the application should be made. The RCMP keep a record by fingerprints. If you simply do it by name and a man applies under the name he is presently going by and you find that the last offence under that name was five years ago, that does not help much. This is why we think a fingerprint check has to be made because the man may be going under all kinds of aliases.

Mr. PUGH: Then on the application the man would have to submit his fingerprints?

Magistrate SHERWOOD: No, he should not because he will be submitting the application in the name under which he was last convicted, and when he was last convicted the RCMP would have added that to his record and they will have him listed under each of his aliases. He is given an FPS number, whatever that means. X

Magistrate HAYES: Well, he has already been catalogued, if you want to use that word, under the Identification of Criminals Act.

Magistrate SHERWOOD: I think we are again discussing detail, which is hard to discuss off the top of your head.

Mr. PUGH: Except that the whole object of this bill is a certificate, and I feel that before we can make any decision on it we have to realize there are certain mechanics to be followed, the end result of which will be the granting of a certificate.

The CHAIRMAN: You brought that information out. I did not know how they kept a record of them.

Mr. PUGH: No.

Mr. AIKEN: Is it your idea that there should be something on the application form that says, "My name is so and so; I have not been convicted"?

Magistrate TUCHTIE: I do not think it should be a formal application by the person. He could write a letter and say, "My name is so and so, I live at so and so, I was convicted on such and such a date, I have a record in such and such a place and I would like to have it expunged from my record"

Mr. AIKEN: What about any subsequent conviction?

Mr. TUCHTIE: Then they would check out with the RCMP, where his record is kept, and it would show whether he has had any.

Mr. PUGH: Just following along the general remarks on rehabilitation, I am sorry I did not hear your exposition this morning, I had to leave, but it would appear to me that there is a strong move afoot for that one-time offender to get away from the continuing stigma, the man or the boy who did something

perhaps on the spur of the moment or under certain stress and strain, goodness knows what, but a reasonably minor offence in the hierarchy of criminality. That, of course, brings it right back to Mr. Honey's problem. What kind of a certificate are we going to produce and to what extent can there be an examination behind that certificate when a man is going for future employment, or the like?

Magistrate HAYES: As far as the young offender is concerned, Mr. Chairman, the basis of our submission is that if the magistrate, in exercising his discretion in dealing with the matter, deals with it in any one of the three ways which we have suggested, then a record will not have been incurred. If you were to take that percentage, and I am not in a position to give you percentages, and if you were to take the number of persons who have been convicted only once and remove that number from the volume, in my own judgment I think you would have removed a good number of the records if they were disposed of on that basis, and in this way they would not come into the problem of expunging. It would have been dealt with as a matter of discretion by the judicial officer at the time.

Mr. PUGH: Well, I think that is covered. The only simile I can put forward is the fact that in the armed forces when we were prepared to leave England to go into action, automatically all crime sheets were destroyed. A man started with a clean sheet. I think that is covered, but I am still a little worried, Mr. Chairman, about the question of bonding and I hope we will have those bonding forms from a variety of companies for the simple reason, to my mind, that this is the all-important thing. Bonding today is the order of the day in most corporations, and certainly in regard to all government applications you pretty well have to have a bond even if it is for a contract, and therefore it seems to me that we should have something here to give us a clue as to how far we should go.

Magistrate SHERWOOD: Mr. Chairman, I realize our president has to catch a plane and other members seem to have other commitments, but I would like a chance to say something. It is obvious, I think, that our association has worked hard for years in educating ourselves to do our jobs better and in examining legislation in the hope that in some cases we can persuade the legislators to make it more suitable, and we have filed our reports from time to time with the Attorney General of the province and with the Department of Justice. We particularly appreciate the invitation that you gentlemen have issued to us to come here today because it is the first time we have ever had a chance to meet face to face the people who make the laws of our country and we are extremely grateful to you for having invited us. I did want to say thank you before terminating the proceedings.

The CHAIRMAN: I think Mr. McQuaid has a question.

Mr. McQUAID: No, I will pass, Mr. Chairman.

The CHAIRMAN: I think you should have an opportunity. You probably have a real blockbuster there.

Mr. McQUAID: The only thing I might mention, referring to this certificate as a certificate of discharge or rehabilitation, is that I do not think it should be called that at all. I think the man whose record is expunged should be entitled to a certificate just the same as I may be entitled to one to the effect that I have

never been charged or convicted of a criminal offence. I think if it were written into the law that I am entitled to this and that the record is completely expunged, then I think this will take care of the problems you raised with respect to bonding companies, and so on. I am not entirely in agreement that the files should be retained. I realize there is some merit in perhaps retaining the files, but I am rather of the opinion right now that if the record is to be expunged it should be expunged and that should be the end of it.

The CHAIRMAN: Mr. Forest, do you have any questions? Well then, members of the Committee, I have nothing more to do except on your behalf thank this very distinguished panel from the Ontario Magistrates Association for coming here and for the view that they have expressed. They are a very, very powerful team, and if a gap developed they quickly managed to supply the answer to it. On behalf of the Committee, Magistrate Tuchtie, Magistrate Sherwood and Magistrate Hayes, we wish to thank you very, very sincerely. We appreciate it very, very much indeed.

Magistrate SHERWOOD: Thank you very much.

APPENDIX 23

REPORT - PROBATION COMMITTEE 1964

April 30, 1965.

The Probation Committee met in Ottawa on January 23rd, 1965, with the following in attendance:

Chairman: L. A. Sherwood, Ottawa.

Members: P. C. Bergeron, Cornwall; P. E. D. Baker, Kingston; C. E. Carter, Ottawa; T. Y. Wills, Q. C., Belleville; G. E. Strike, Q. C., Ottawa; and Messrs. Roy Tear of Kingston and Maurice Racette of Ottawa representing the Ontario Probation Officers Association. Prior to this meeting we had proceeded by correspondence and personal contact.

We are pleased to report to you as follows:

1. The Magistrates Desk Sheet proposed in our 1963 Report is now being used in many Courts and is considered useful.

2. The new recognizance suggested for Section 637 and Section 638 probations in our 1963 Report were approved. No further action has been taken. We feel these should be forwarded to the Attorney-General with a request that necessary amendments to the Code be taken up with the Department of Justice. We assume this should be done by our Law Reform Committee but if such is not the case, we would like some direction.

3. Notwithstanding our 1963 Report, probation officers are still required to collect restitution in most areas (including Ottawa). We still hope all Magistrates will endeavour to have restitution collected by the Court Office as we feel it is important that probation officers not be looked on or used as collection agents.

4. We again recommend that Section 6 of the Ontario Probation Act be deleted and that Section 3 of the Summary Convictions be amended to make Sections 637 and 638 of the code applicable. Our 1963 recommendation was as follows:

"The Ontario Probation Act makes no provision for the use of probation following a conviction under an Ontario Statute. It does allow probation to be used as soon as a person is charged presumably so that a successful probation will result in a discharge without record of conviction. A breach of probation results in the original charge being proceeded with.

Your Committee sees the following serious objection to Section 6:

- (a) A man may be placed under the restraint of supervision and other losses of personal rights and subsequently turn out to be innocent of any offence.

- (b) Upon a breach many months after the probation commences it may be well nigh impossible to locate the witnesses and evidence originally available.
- (c) The Magistrate who first placed the offender on probation would have made such enquiries under Section 6 at that time as to disqualify himself from conducting the trial after a breach.

Your Committee therefore recommends that the Probation Act be amended by deleting Section 6.

At the annual meeting you asked us to reconsider these recommendations and we have done so. We still feel that our recommendations of 1963 are both right and desirable for the reasons given."

5. We went on to look at Section 638 of the Code and agreed unanimously on these recommendations.

- (a) That Section 638 be amended as quickly as possible by:
 - (i) deleting the words "and no previous conviction is proved against him".
 - (ii) after antecedents add "including any previous criminal record".
 - (iii) deleting subsection 5 entirely.
- (b) That Magistrates be urged to use caution in granting repeat probations. In that connection your Chairman prepared a short digest of a study done by Mr. Outerbridge of the Probation Service. A copy of the digest is attached hereto. A new and comprehensive study is now under way which will provide more reliable data in a couple of years.
- (c) Because of the grave consequences of a criminal record to a person's future when that person has had the misfortune of committing one offence and being caught and convicted, your Committee felt that there should be available some provision for probation without conviction for first offenders only. We looked at various commonwealth statutes in this regard and found several making such provisions but restricted either to Summary Conviction Offences or trivial offences. The latter term is difficult of definition and it is not infrequently that basically decent people become marginally involved in serious offences so as to become parties to the offence. We felt that such persons should also be able to benefit from absence of conviction.

Our proposal is that we begin now to seek amendment to Section 638 along the following lines:

638 1. Where an accused is charged with an offence and the Court finds the charge proved and it appears to the court that, having regard to his age, character, antecedents and previous criminal record, to the nature of the offence and to any extenuating circumstances surrounding the commission of the offence, it is expedient that the accused be released on probation or discharged, the court may except where a minimum punishment is prescribed by law, instead of sentencing him to imprisonment, in the case an accused against whom

no previous conviction is proven, with or without proceeding to conviction, and in any other case after proceeding to conviction, either:

- (a) Discharge the accused absolutely
or
- (b) Discharge the accused conditionally on his entering into a recognizance, with or without sureties
or
- (c) Suspend the passing of sentence and direct that he be released upon entering into a recognizance in form 28, with or without sureties.

638 2. Every recognizance under subsections (b) and (c) above shall require he accused to:

- (i) to keep the peace and be of good behaviour during any period that is fixed by the court.
- (ii) to appear and to receive sentence when called upon to do so during the period fixed under paragraph (a), upon breach of his recognizance.

638 3. A court that suspends the passing of sentence under Section 1(c) above may prescribe as conditions of the recognizance that

- (a) the accused shall make restitution and reparation to any person aggrieved or injured for the actual loss or damage caused by the commission of the offence, and
- (b) the accused shall provide for the support of his wife and any other dependents whom he is liable to support,

and the court may impose such further conditions as it considers desirable in the circumstances and may from time to time change the conditions and increase or decrease the period of the recognizance, but no such recognizance shall be kept in force for more than three years.

638 4. A court that suspends the passing of sentence may require as a condition of the recognizance that the accused shall report from time to time, as the court may prescribe, to a person designated by the court, and the accused shall be under the supervision of that person during the prescribed period.

The person designated by the court under subsection (3) shall report to the court if the accused does not carry out the terms on which the passing of sentence was suspended, and the court may order that the accused be brought before it to be sentenced.

639 4. Should be amended to read:

The court may, upon the appearance of the accused pursuant to this section or subsection (4) of Section 638 and upon being satisfied that the accused has failed to observe a condition of his recognizance, convict and sentence as the case may be.

You will note that we suggest the maximum period of a recognizance be extended from two years to three years. All members felt two years was too short for some cases requiring extensive rehabilitation or substantial restitution.

It will also be necessary to make special provision to ensure that information relating to unconditional discharge or conditional discharge or probation successfully completed without conviction be available only to a court in the event of the accused being convicted of a subsequent offence. The purpose of the avoidance of conviction is frustrated if details of such dispositions appear on criminal records indiscriminately produced in large numbers and circulated. Conversely such information must be available to a subsequent convicting court so that the accused can enjoy the benefit only once.

A further provision in the Code should be made providing that any person unconditionally discharged or conditionally discharged or placed on probation where such condition or probation is successfully terminated may, if no conviction was registered, make a declaration or affidavit or other statement, sworn or otherwise, that he has never been charged with or convicted of a criminal offence.

Somewhat outside our terms of reference, we would like to suggest to the Law Reform Committee that the last paragraph should apply to all persons who have been charged with, but not convicted of, a criminal offence. Too many police records in circulation today include charges dismissed or withdrawn and are very prejudicial and too many employment questionnaires are not restricted to convictions but include questions relating to having been charged.

Finally we also suggest that some provision for expunging a single criminal conviction five years after conviction or, if imprisoned, five years after being released from prison, should be made. Believing as we do in the necessity of protecting the once only offender who is placed in probation, we feel it only fair that the person who is imprisoned because that seems the best way to rehabilitate him should also have a chance to earn relief from his conviction.

Respectfully submitted,

L. A. Sherwood,
Chairman,

INDEX
to
MINUTES OF PROCEEDINGS AND EVIDENCE

Nos. 1 through 33
Respecting all matters studied by the Committee.

BILL S-9, AN ACT TO REVISE AND CONSOLIDATE THE INTERPRETATION ACT AND AMENDMENTS THERETO, AND TO EFFECT CERTAIN CONSEQUENTIAL AMENDMENTS TO THE CANADA EVIDENCE ACT AND THE BILLS OF EXCHANGE ACT.

	<i>Proceedings No.</i>	<i>Page No.</i>
Ninth Report	28	999

WITNESSES

Bedard, R., Associate Deputy Minister of Justice	28	1003-1030
Justice, Department of	28	1003-1030
Thorson, D. S., Associate Deputy Minister of Justice ..	28	1003-1030

BILL C-26, AN ACT TO AMEND THE CRIMINAL CODE
(SAFETY DEVICES FOR AUTOMOTIVE VEHICLES)

BILL C-49 AN ACT TO AMEND THE CRIMINAL CODE
(DANGEROUS MOTOR VEHICLES)

PRIVATE MEMBERS, NOTICES OF MOTION

NOS. 26, 21, and 38.

	<i>Proceedings No.</i>	<i>Page No.</i>
Tenth Report	29	1031

WITNESSES

Alberta, Government of Province	16	573-591
American Motors Corporation	20 & 21	711-765
Ancroft, J. A.	11	285-424
Annatyne, R. M.	29	
erry, W. S.	20 & 21	711-765
riggs, C. R.	20 & 21	711-765
rooks, Charles	27	953-979
ampoli, J.	29	
Canadian Automobile Association	10	249-282
Canadian Government Specifications Board	11	285-424

Canadian Highway Safety Council	18	615-642
Canadian Labour Congress	26	925-932
		940-944
Chrysler Corporation Limited	20 & 21	711-765
	29	
Conlin, F. E.	29	
Defence Production, Dept.	7	151-164
	26	933-940
	26	925-932
Dodge, William	7	151-164
Drury, Hon. C. M., Minister of Defence Production	26	933-940
Evans, A. S.	29	
Farmer, P. J.	18	615-642
Ford Motor Company	20 & 21	711-765
	29	
Frawley, J. J.	16	573-591
General Motors Corporation	20 & 21	711-765
	29	
Goodyear Tire and Rubber Co.	21	745-765
Government, Province of Alberta	16	573-591
Grafftey, Heward, M.P.	4 & 5	77-105
		111-122
Haeusler, R. C.	20 & 21	711-765
Hanna, J. E.	11	285-424
Heas, Michael	27	953-979
Kaiser Jeep of Canada Limited	20 & 21	711-765
Kiborn, R. F.	29	
Lacy, G. A.	20 & 21	711-765
	29	
Mather, Barry, M.P.	4	77-105
McMillan, C. R.	21	745-765
McQueen, J. G.	10	249-282
Mehrer, E.	29	
Milne, James	27	953-979
Mondoux, Yves	18	615-642
O'Callaghan, Roy P.	20 & 21	711-765
Paul, E. G.	10	249-282
Purdy, Carl	20 & 21	711-765
Raham, K. B.	20 & 21	711-765
Read, Don	27	953-979
Renaud, Guy	10	249-282

Richardson, E. R. S.	29	
Richardson, J. B. F.	29	
Scott, W.	20 & 21	711-765
Sheffe, Larry	26	925-932
		940-944
	27	953-979
Southam, R. R., M.P.	3	47-72
Smith, C. R.	29	
Specifications Board, Canadian Gov.	11	285-424
Stonex, K. A.	20 & 21	711-765
Taylor, Hon. Gordon E., Minister of Hwys. (Alberta)	16	573-591
United Automobile Workers Union	27	953-979
Wahn, Ian, M.P.	3 & 5	47-72
		111-122
Wolochow, D.	11	285-424
Woodcock, W. A.	20 & 21	711-765

APPENDICES

Nos.	Page
1. Brief by Mr. Grafftey, M.P.	94
2. Synopsis of brief by Mr. Grafftey	103
3. Resolution of Canadian Fire Marshals and Commissioners	269
4. Brief—Canadian Automobile Association	270
5. Canadian Government Specifications Board draft Standards re automobiles 97-GP-1 through 97-GP-27 (Index p. 399)	305
6. CGSB draft “guide on factors of automobile safety”	366
17. C.L.C. Brief of February 2, 1967 to Committee	
19. Submission of Canadian Labour Congress	921
20. Brief of Local 707, UAW—Mr. J. Milne	980
21. Brief of Local 222, UAW	987
22. Brief of Local 707, UAW—Mr. M. Heas	990
“Ineffectiveness of the Quality Control Dept. in Controlling Safety Standards at Ford Oakville”.	

EXHIBITS

Nos.
1. Received from Senator Warren G. Magnuson, Chairman of the Committee on Commerce, U.S. Senate— Bill S. 3005 regarding Safety Standards of motor vehicles.
2. Received from Senator Warren G. Magnuson, Chairman of the Committee on Commerce, U.S. Senate— Committee on Commerce—Legislative Calendar, April 1, 1966.

3. Received from Senator Warren G. Magnuson, Chairman of the Committee on Commerce, U.S. Senate—Traffic Safety Hearings, Committee on Commerce.
20. 1966 S.A.E. (Society of Automotive Engineers) Handbook
28. The recall figures of Canadian cars for the years 1963 through 1967 by Kaiser Jeep of Canada Ltd.; Chrysler Canada Ltd.; Ford Motor Company of Canada.; American Motors (Canada) Ltd.; General Motors Products of Canada Ltd.; Volvo (Canada) Ltd.; which was filed with the Clerk of the Committee by order of the Committee November 31, 1966 when it was holding hearings in Windsor.
30. Summary Report—The State of the Art of Traffic Safety by Arthur D. Little Inc.
31. Technical Notes prepared by the Motor Vehicle Accident Study Group of the National Research Council
Tech. Note #1, Motor Vehicle Safety — The System
Tech. Note #2, Motor Vehicle Safety—The Driver
Tech. Note #3, Motor Vehicle Safety — The Driver, Alcoholically Impaired
Tech. Note #4, Motor Vehicle Safety — The Vehicle
Tech. Note #5, Motor Vehicle Safety — The Organizations
Tech. Note #6, Motor Vehicle Safety — The Vectors
Tech. Note #7, Report of The Motor Vehicle Accident Study Group
Tech. Note #8, Motor Vehicle Safety, Accident Control.
32. Resolution of Local 444 of the U.A.W. relating to federal inspection during the processing and manufacturing of automotive vehicles.
36. Resolution of the Canadian Labour Congress re Automobile Compensation Board, Resolution re Traffic Safety.
37. Canadian Government Specifications Board "Guide to Traffic Safety", and "Motor Vehicle Safety Standards".
38. Documents supplied by the Canadian Government Specifications Board showing comparative auto safety legislation provincially, and in England, France, Germany, Italy and Japan.
39. Letter and documents from Dr. William Haddon, Administrator, Traffic Safety Agency, U.S. Department of Commerce, including The Initial Federal Motor Vehicle Safety Standards, dated February 1, 1967, to Mr. Timothy D. Ray, Clerk of the Committee.
40. Copies of Grievance No. 3-31108 at Chrysler Corporation of Canada Ltd.
41. Inspection defect cards of O. Assy., 7474-1, Nov. 66.
42. Inspection Check List, 169128 and 166998.

43. New Vehicle Standing Procedure, dated October 12, 1965, and December 6, 1965, issued by A. A. McKenzie, Industrial Relations Manager, Ford, Oakville.
44. Report, dated November 1, 1966, signed by Mr. J. L. Coissie relating an inspection incident.
45. Brief of Local 444 U.A.W.—Presented by Dr. Charles Brooks.
46. Agreement between Chrysler Canada Ltd. and U.A.W. Local 444, March 7, 1965.
47. Chrysler Assembly Inspection Travel Cards.
48. Chrysler Passenger Car Pre-Delivery Service Inspection.
49. Chrysler Organization Chart.
50. Procedure for the Safe Handling of Defective Power Assist Brake Units, dated October 1, 1965, from Ford.
51. Safety Precaution—No Brake Vehicle sign from Ford.
52. Danger—Do not Drive sign from Ford.
53. Danger—"Toe In" sign from Ford.
54. 1967 Passenger Car Pre-Delivery Service Record from Ford.
55. 1967 New Vehicle Pre-Delivery Inspection and Adjustment Check Sheet from General Motors.
56. Inspection Record Card from General Motors.

BILL C-87, AN ACT TO AMEND THE CRIMINAL CODE,
(IMPAIRED DRIVING).

	Proceedings No. Page Nos.	
FIFTH REPORT	26	915
<i>Witnesses</i>		
Mr. R. M. Anthony	8	167-211
Mr. Anthony Bazos	13	473-505
Mr. W. F. Bowker	8	167-211
Canadian Bar Association	14	509-539
Canadian Highway Safety Council	8	167-211
	17	595-612
	18	615-642
Mr. Perrault Casgrain	14	509-539
Mr. A. Gordon Cooper	14	509-539
Mr. P. J. Farmer	17	595-612
	18	615-642
Mr. Robert E. Malkin	12	427-448

Mr. Barry Mather, M.P.	2	25-41
Mr. Ronald Merriam	14	509-539
Mr. Yves Mondoux	17	595-612
	18	615-642
Dr. I. M. Rabinowitch	15	543-566
Dr. H. Ward Smith	8	167-211
	17	595-612
Mr. J. Douglas Tracy	12	448-450
Dr. Wallace Troup	6	127-146

Appendices

Proceedings No. Page Nos.

No. 7	Brief of Mr. A. Bazos	13	502
No. 8	Canadian Bar Association resolution	14	534
No. 9	Canadian Bar Association brief	14	535
No. 10	Graph by Dr. I. M. Rabinowitch —comparative results of alcohol in veinous and arterial blood.	15	569
No. 11	Canadian Highway Safety Council —“Alcohol and Traffic Safety”	18	639

Exhibits

No.

4. “Breath Tests for Alcohol” by H. Ward Smith, Ph.D., and D. M. Lucas M.Sc.
5. “The Development of a Large Scale Breath Testing Programme in Ontario.” by H. Ward Smith, Ph.D., and D. M. Lucas, M.Sc.
6. “Use of the Breathalyzer in Ontario—1965” by R. Hallett, M.Sc.
7. “Alcohol Detector Tube of R. F. Borkenstein” by R. Hallett, M.Sc.
8. Drinking and Driving.
9. The Drinking Driver, Report of a Special Committee of The British Medical Association, 1965.
10. “The Roles of Carbon Monoxide, Alcohol and Drugs in Fatal Single Car Accidents; Alcohol, Drug and Organic Factor Study”, by the Department of California Highway Patrol.
11. Alcotest apparatus with accompanying brochure.
12. 1964-5 Report of the Minister, Ontario Department of Transport.
13. “Accident Facts, 1965”, Statistics relating to motor vehicle traffic accidents, Ontario Department of Transport.
14. “Methods of Forensic Science”, Volume IV by Dr. H. Ward Smith.
15. Letter from Mr. C. E. Laybourn, Director of Traffic Safety, Ontario Department of Transport to Mr. P. J. Farmer, Canadian Highway Safety Council.

- 16. Fatal Motor Vehicle Traffic Accidents on the Kings Highways Only—May, 1966, by the Planning Board, Traffic & Planning Studies Section, Ontario Department of Highways.
- 27. "Proposals for detecting impairment of skill caused by intoxication, sleep deprivation and similar influences", prepared by Dr. C. B. Gibbs, of the National Research Council and classified as confidential.
- 31. N.R.C. Technical Note No. 3, Motor Vehicle Safety—The Driver Al-coholically Impaired.
- 33. Letter of January 10, 1967, from Mr. R. A. Bartlett, Registrar of Motor Vehicles, Government of Newfoundland and Labrador to Mr. A. J. P. Cameron, Chairman of the Justice and Legal Affairs Committee com-municating a resolution passed at a public conference on Highway Safety in that province.

BILL C-105, AN ACT TO AMEND THE CRIMINAL CODE, (INSANITY)

EIGHT REPORT	Issue Nos.	Page Nos.
<i>Witnesses</i>	27	951
Professor Stanley Beck	19	647-705
Mr. Andrew Brewin, M.P.	19	647-705
Hon. J. C. McRuer	25	
Professor Stuart Ryan	19	647-705
<i>Appendices</i>	Issue No.	Page
12. "Criminal Insanity from M'Naghten to Durham" prepared by Library of Parliament	19	673
13. "Mental Abnormality and the Criminal Law" by Professor Stuart Ryan	19	688
14. "Alternatives to the M'Naghten Rules" by Professor Stanley Beck	19	701
<i>Exhibits</i>		
17. Extract from Mental Disability and the Criminal Law pp 330-372.		
18. "M'Naghten vs Durham" by Lucien Panaccio, Extract from Canadian Psychiatric Association Journal, June 1964, Vol. 9, pp 227-231.		
19. United States vs Freeman, United States Court of Appeals—Second Circuit, Federal Reporter 2nd Series, Vol. 357, pp 606-629.		
35. Report of the Royal Commission on the Law of In- sanity as a Defence in Criminal Cases—October 25, 1956.		

BILL C-118, AN ACT TO AMEND THE CRIMINAL CODE (NEGLIGENCE IN OPERATION OF MOTOR VEHICLE).

proceeding No. Page Nos.

FOURTH REPORT

Witnesses

Mr. Yves Forest, M.P.

1

9-22

Exhibits

No.

34. Letter of May 19, 1966, from Mr. F. E. Sloane, Superintendent of Staff and Deputy Chief Constable, City of Edmonton to Mr. John E. Hart, Deputy Attorney General, Province of Alberta.
 Letter of June 2, 1966, from Mr. William Henkel, Solicitor, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.
 Letter of May 20, 1966, from Mr. R. M. Anthony, Solicitor, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.
 Letter of May 20, 1966, from Mr. J. H. Carpenter, Chief of Police, Lethbridge, Alberta, to Mr. J. E. Hart, Deputy Attorney General, Province of Alberta.
 Letter of June 28, 1966, from Mr. R. W. Bonner, Attorney General, British Columbia, to the Clerk of the Committee.
 Letter of May 31, 1966, from Mr. Gordon S. Gale, Solicitor, Department of the Attorney General, Nova Scotia, to the Clerk of the Committee.
 Letter of May 20, 1966, from Mr. Darrel V. Heald, Attorney General, Saskatchewan, to the Clerk of the Committee.

BILL C-176, AN ACT TO AMEND THE CRIMINAL CODE
(INSANITY AT TIME OF TRIAL)

SEVENTH REPORT

Witnesses

	Issue No.	Page Nos.
	27	950
Dr. Barry Boyd	9	217-244
Canadian Mental Health Association	22	769-793
Dr. J. D. Griffin	22	769-793
Mr. Gowan T. Guest	22	769-793
Hon. J. C. McRuer	25	
Mr. John Munro, M.P.	9	217-244
Ontario Department of Health	9	217-244
Mr. Barry Swadron	9	217-244

Exhibits.

35. Report of the Royal Commission on the Law of Insanity as a Defence in Criminal Cases.—October 25, 1966.

PRIVATE MEMBERS' NOTICE OF MOTION No. 32—Mr. Basford.

SIXTH REPORT	Proceedings No.	Page Nos.
<i>Witnesses</i>	26	918
Mr. Maurice Arless	24	841-789
Mr. J. R. Baldwin	23	797-813
Mr. Ron Basford, M.P.	13	457-473
Mr. James Barrett	24	841-879
Mr. Gordon Blair	24	841-879
Mr. Eugene R. Brady	24	841-879
Canadian Airline Pilots Association	23	813-838
Mr. George Finlayson	24	841-879
Captain P. C. Hamilton	23	813-838
Mercury Travelsurance Agencies	24	841-879
Mutual of Omaha Insurance Co.	24	841-879
Mr. H. L. Rogers	24	841-879
Captain W. J. Rodgers	23	813-838
Department of Transport	23	797-813
Mr. A. J. Watson	23	797-813
Mr. Eric Winsor	23	797-813

Appendices	Proceedings	
	No.	Page Nos.
15. Passenger fatality Rates 1945-65	23	837
16. Resolution of International Federation of Air Line Pilots Association	23	838
17. Brief of Mercury International Travelsurance Agencies Ltd.	24	870
18. Brief of Mutual of Omaha and Tele-Trip Inc. ..	24	874

Exhibits	
No.	
21.	"The Relationship between Airline Sabotage and Air Trip Insurance", Civil Aviation Branch, Department of Transport.
22.	"Insurance Concession at Departmental Airports" (prepared by The Department of Transport).

23. DOT Accident Report of the Douglas DC 6 B, CF-CUQ at 100 Mile House, B.C., on July 8, 1965.
24. DOT Accident Report of the Douglas DC/3, CF-CUA, near Quebec, P.Q., on September 9, 1949.
25. Mutual of Omaha specimen policies for vending machines pertaining to air trip insurance.
26. Letter from Mr. Grant to the Minister of Justice dated October 7, 1966, letter to Mr. Grant from the Director, Airports and Field Operations, Department of Transport, dated October 31, 1966; letter from the Department of Justice to Grant dated October 13, 1966; letter from Grant to the Department of Justice dated December 5, 1966, letter from the Department of Justice to Timothy D. Ray, Clerk of the Committee, dated December 12, 1966.
29. Letter of October 26, 1965, from Mr. Richard Humphrey, Superintendent of Insurance to Mr. R. Goodwin, Director, Civil Aviation, Department of Transport;
Letter of August 20, 1965, from Mr. Gordon H. Stewart, President, Canadian Air Line Dispatchers Association, to the Honourable J. W. Pickersgill;
Letter of August 4, 1965, from Mr. Alastair R. Paterson of Manning, etc. to Captain J. H. Foy, President, Canadian Airline Pilots' Association;
Letter of August 3, 1965, from Mr. F. A. Walton, Executive Vice-President for Canada, Mutual of Omaha Insurance Company to Mr. R. W. Goodwin, Director of Civil Aviation, Department of Transport;
Letter of July 26, 1965, from Mr. C. B. Archibald of C. B. Archibald Ltd., Engineering Consultants, to Mr. Jack Davis, M.P.;
Letter of July 20, 1965, from Mr. R. H. Barron, Barrister and Solicitor to the Honourable J. W. Pickersgill;
Letter of June 21, 1965, from Captain W. J. Rodgers, of C.A.L.P.A., to Mr. R. W. Goodwin, Director, Civil Aviation, Department of Transport;
Letter of October 22, 1958, from Miss Marjorie MacLaughlin to The Superintendent of Insurance;
U.S. Report of Government-Industry Steering Committee on Airline Sabotage, and Report of Subcommittee on Relationship of Insurance to Airline Sabotage of March, 1963.
Details of Concession Fees from Airtrip Insurance Fiscal Years April 1 1960 to March 31, 1965 prepared by the Air Services, Department of Transport.
Letter of January 27, 1967, from Montreal Board of Trade to Mr. A. J. P. Cameron.

BILL C-192, AN ACT TO AMEND THE CRIMINAL CODE
(DESTRUCTION OF CRIMINAL RECORDS)

<i>Witnesses</i>	<i>Proceedings No.</i>
Hayes, F. C., Magistrate	33
John Howard Society of Ontario	31
Kirkpatrick, A. M.	31
Lachance, Georges-C., M.P.	31
Magistrates Association, Ontario	33
National Parole Board	32
Sherwood, L. A., Magistrate	33
Street, George	32
Tolmie, Donald R., M.P.	30
Tuchtie, W. J., Senior Magistrate	33

Appendices

Nos.		
23	Ontario Magistrates Association Report— Probation Committee—1964	33

Exhibits

Nos.	
57	Ontario Magistrates Association document Suspended Sentence and Probation.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

Copies and complete sets are available to the public by subscription to the Queen's Printer. Cost varies according to Committees.

Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

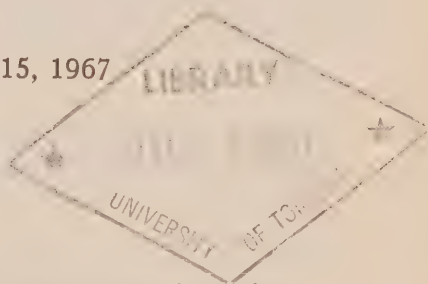
PROCEEDINGS

No. 1

THURSDAY, JUNE 15, 1967

INCLUDING

Appendix A: Main Estimates 1967-68, Department of Justice.



ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (High Park)

Vice-Chairman: Mr. Yves Forest

and

Mr. Addison,	Mr. Guay,	Mr. Otto,
Mr. Aiken,	Mr. Honey,	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Scott (Danforth),
Mr. Gilbert,	Mr. Mandziuk,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
		Mr. Woolliams—24.

(Quorum 8)

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

FRIDAY, May 19, 1967.

Resolved,—That the following Members do compose the Standing Committee on Justice and Legal Affairs:

Messrs.

Addison,	Grafftey,	Otto,
Aiken,	Guay,	Pugh,
Cameron (High Park),	Honey,	Ryan,
Cantin,	Latulippe,	Scott (Danforth),
Choquette,	MacEwan,	Tolmie,
Forest,	Mandziuk,	Wahn,
Gilbert,	McQuaid,	Whelan,
Goyer,	Nielsen,	Woolliams—(24).

THURSDAY, May 25, 1967.

Ordered,—That, saving always the powers of the Committee of Supply in relation to the voting of public monies, the items listed in the Main Estimates for 1967-68, relating to the Department of Justice be withdrawn from the Committee of Supply and referred to the Standing Committee on Justice and Legal Affairs.

Attest

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

REPORT TO THE HOUSE

THURSDAY, June 15, 1967

FIRST REPORT

Your Committee recommends that its quorum be reduced from 13 to 8 members.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, June 6, 1967.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 10.00 a.m. this day for the purpose of organization, the following members were present: Messrs. Aiken, Cameron (*High Park*), Choquette, Goyer, Guay, Honey, Latulippe, MacEwan, McQuaid, Ryan, Tolmie (11).

At 10.30 a.m. there being no quorum, the meeting was postponed.

THURSDAY, June 8, 1967.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 10.00 a.m. this day for the purpose of organization, the following members were present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Goyer, Honey, Latulippe, Pugh, Ryan, Tolmie, Wahn (11).

At 10.30 a.m. there being no quorum, the meeting was postponed.

TUESDAY, June 13, 1967.

The Standing Committee on Justice and Legal Affairs having been duly called to meet at 10.00 a.m. this day for the purpose of organization, the following members were present: Messrs. Aiken, Cameron (*High Park*), Cantin, Gilbert, Guay, Honey, Tolmie (7).

At 10.20 a.m., there being no quorum, the meeting was postponed.

THURSDAY, June 15, 1967.

The Standing Committee on Justice and Legal Affairs met this day at 11.10 a.m. for the purpose of organization.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Forest, Gilbert, Goyer, Grafftey, Guay, Honey, Latulippe, MacEwan, Otto, Ryan (14).

The Clerk attending and having called for nominations, it was moved by Mr. Ryan, seconded by Mr. Honey, that Mr. Cameron take the Chair of this committee as Chairman.

On motion of Mr. MacEwan, seconded by Mr. Forest,

Agreed,—That nominations be closed.

There being no other nominations, the Clerk declared Mr. Cameron duly elected Chairman, and invited him to assume the Chair.

Mr. Cameron thanked the Committee for the honour bestowed upon him and then invited nominations for Vice-Chairman.

Mr. Guay moved, seconded by Mr. Choquette,
That Mr. Forest be Vice-Chairman of the Committee.

There being no other nominations, the Chairman declared Mr. Forest duly elected Vice-Chairman.

Mr. Forest thanked the Committee for his re-election as Vice-Chairman.

On motion of Mr. Choquette, seconded by Mr. Ryan,

Resolved,—That the Committee print from day to day 750 copies in English and 350 copies in French of its proceedings.

On motion of Mr. Forest, seconded by Mr. Gilbert,

Resolved,—That the items listed in the Main Estimates for 1967-68 relating to the Department of Justice be printed as an appendix to today's Minutes of Proceedings (*see Appendix A*).

On motion of Mr. Ryan, seconded by Mr. MacEwan,

Resolved,—That the Chairman, Vice-Chairman, and three members appointed by the Chairman do compose the Subcommittee on Agenda and Procedure.

On motion of Mr. Honey, seconded by Mr. Aiken,

Resolved,—That the Chairman seek leave of the House to reduce the quorum from 13 to 8.

Agreed,—That the Minister of Justice be heard at the next meeting.

At 11.20 a.m., there being no further business, the meeting was adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

APPENDIX A

JUSTICE

MAIN ESTIMATES, 1967-68

JUSTICE

No. of Vote	Service	1967-68	1966-67	Change	
				Increase	Decrease
		\$	\$	\$	\$
(S)	Minister of Justice—Salary and Motor Car Allowance (Details, page 249).....	17,000	17,000		
1	Administration, including grants and contributions as detailed in the Estimates, gratuities to the widows or such dependents as may be approved by Treasury Board of Judges who die while in office and authority to make recoverable advances for the administration of justice on behalf of the governments of the Northwest Territories and the Yukon Territory (Details, page 249).....	3,983,100	2,724,350	1,258,750	
(S)	Judges' Salaries, Allowances and Pensions (Details, page 253).....	9,513,700	9,011,700	502,000	
		13,496,800	11,736,050	1,760,750	
	SUMMARY				
	To be voted.....	3,983,100	2,724,350	1,258,750	
	Authorized by Statute.....	9,530,700	9,028,700	502,000	
		13,513,800	11,753,050	1,760,750	

Positions (man-years)		Details of Services	Amount	
1967-68	1966-67		1967-68	1966-67
			\$	\$
		Approximate value of major services not included in these Estimates		
		Accommodation (Provided by the Department of Public Works).....	628,900	531,300
		Accounting and cheque issue services (Comptroller of the Treasury).....	284,700	39,000
		Contributions to Superannuation Account (Treasury Board).....	188,100	101,300
		Contributions to Canada Pension Plan Account and Quebec Pension Plan Account (Treasury Board)....	28,400	23,200
		Employee surgical-medical insurance premiums (Treasury Board).....	29,300	12,700
		Employee compensation payments (Department of Labour).....	700	3,200
		Carrying of franked mail (Post Office Department).....	29,000	2,600
			1,189,100	713,300
		Statutory—Minister of Justice—Salary and Motor Car Allowance		
		Salary..... (1)	15,000	15,000
		Motor Car Allowance..... (2)	2,000	2,000
			17,000	17,000
		Vote 1—Administration including grants and contributions as detailed in the Estimates, gratuities to the widows or such dependents as may be approved by Treasury Board, of Judges who die while in office, and authority to make recoverable advances for the administration of justice on behalf of the Governments of the Northwest Territories and the Yukon Territory		
		DEPARTMENTAL ADMINISTRATION INCLUDING GRANTS AND CONTRIBUTIONS AS DETAILED IN THE ESTIMATES AND AUTHORITY TO MAKE RECOVERABLE ADVANCES FOR THE ADMINISTRATION OF JUSTICE ON BEHALF OF THE GOVERNMENTS OF THE NORTHWEST TERRITORIES AND THE YUKON TERRITORY		
		Salaried positions:		
		Executive, Scientific and Professional:		
1	1	Deputy Minister (\$27,000)		
2	2	Associate Deputy Minister (\$24,840)		
1	2	Assistant Deputy Minister (\$24,840)		
2	1	Assistant Deputy Minister (\$22,680)		
1	1	Senior Officer 3 (\$20,500-\$24,750)		
9	7	Senior Officer 2 (\$18,500-\$22,750)		
1		Senior Advisory Council (\$18,500-\$22,000)		
80		Senior Officer 1 (\$16,500-\$20,500)		
9	35	(\$16,000-\$18,000)		
6	8	(\$14,000-\$16,000)		
9	3	(\$12,000-\$14,000)		
24	5	(\$10,000-\$12,000)		
1	13	(\$8,000-\$10,000)		
		(\$6,000-\$8,000)		

Positions (man-years)		Details of Services	Amount	
1967-68	1966-67		1967-68	1966-67
			\$	\$
		Vote 1 (Continued)		
		DEPARTMENTAL ADMINISTRATION (Continued)		
		Salaried positions: (Continued)		
		Administrative and Foreign Service:		
		(\$18,000-\$20,000)		
1	4	(\$12,000-\$14,000)		
1	1	(\$10,000-\$12,000)		
6	2	(\$8,000-\$10,000)		
2	10	(\$6,000-\$8,000)		
		Technical, Operational and Service:		
3		(\$8,000-\$10,000)		
3	4	(\$6,000-\$8,000)		
	2	(\$4,000-\$6,000)		
		Administrative Support:		
2		(\$8,000-\$10,000)		
19	19	(\$6,000-\$8,000)		
145	78	(\$4,000-\$6,000)		
13	48	(Under \$4,000)		
341 (341)	245 (245)	Salaries (including \$155,500 allotted during 1966-67 from the Finance Contingencies Vote for increases in rates of pay).....(1)	2,966,000	1,820,500
		Allowances.....(2)	30,000	30,700
		Professional and Special Services.....(4)	50,000	50,000
		Legal Fees, Court Costs and Payments for the Maintenance of Prisoners and Juvenile Delinquents.....(4)	200,000	170,000
		Travelling and Other Expenses of Judges for Visiting Custodial Institutions.....(5)	3,000	3,000
		Other Travelling Expenses.....(5)	75,000	60,000
		Travelling Expenses of Chief Justices Attending Annual Conference of Chief Justices.....(5)	6,000	6,000
		Freight, Express and Cartage.....(6)	1,500	1,100
		Postage.....(7)	3,000	3,000
		Telephones and Telegrams.....(8)	47,000	34,000
		Publication of Departmental Reports and Other Material.....(9)	3,000	3,000
		Office Stationery, Supplies, Equipment and Furnishings.....(11)	74,000	39,000
		Law Books, Books of Reference for the Library and Binding of Same.....(11)	16,500	11,900
		Materials and Supplies.....(12)	500	500
		Repairs and Upkeep of Equipment.....(17)	500	500
		Municipal or Public Utility Services.....(19)	12,000	12,000
		Contribution to the Conference of Commissioners on Uniformity of Legislation in Canada.....(20)	200	200
		Grant to the Canadian Corrections Association to assist in defraying the expenses of the Fifth International Criminological Congress held in Montreal in 1965.....(20)		31,000
		Transportation Expenses of Prisoners and Escorts and Discharged Inmates.....(22)		33,000
		Sundries.....(22)	9,500	9,500
			3,497,700	2,318,900
		Less—Amounts recoverable from Northwest Territories Territorial Government and Yukon Territorial Government.....(34)	454,200	340,000
			3,043,500	1,978,900

Positions (man-years)		Details of Services	Amount	
1967-68	1966-67		1967-68	1966-67
			\$	\$
		Vote 1 (Continued)		
		DEPARTMENT ADMINISTRATION (Continued)		
		Expenditure		
		1964-65.....	\$ 1,616,939	
		1965-66.....	1,632,919	
		1966-67 (estimated).....	2,234,000	
		STATUTE REVISION COMMISSION		
		Professional and Special Services.....(4)	100,000	100,000
		Postage.....(7)	200	200
		Telephones and Telegrams.....(8)	600	300
		Publication of Departmental Reports and Other Material.....(9)	40,000	
		Office Stationery, Supplies and Equipment.....(11)	7,200	7,500
		Sundries.....(22)	2,000	2,000
			150,000	110,000
		Expenditure		
		1964-65.....	\$	
		1965-66.....	17,531	
		1966-67 (estimated).....	25,000	
		SUPREME COURT OF CANADA—ADMINISTRATION		
		Salaried Positions:		
		Executive, Scientific and Professional:		
		(\$18,000-\$20,000)		
1		(\$16,000-\$18,000)		
1	1	(\$14,000-\$16,000)		
1	1	(\$12,000-\$14,000)		
4	3	(\$10,000-\$12,000)		
2		(\$8,000-\$10,000)		
	4	(\$6,000-\$8,000)		
		Administrative and Foreign Service:		
2	1	(\$8,000-\$10,000)		
	1	(\$6,000-\$8,000)		
		Administrative Support:		
14	2	(\$6,000-\$8,000)		
10	19	(\$4,000-\$6,000)		
7	9	(Under \$4,000)		
42	42			
(42)	(42)	Salaries (including \$16,500 allotted during 1966-67 from the Finance Contingencies Vote for in- creases in rates of pay).....(1)	302,000	291,500
		Professional and Special Services.....(4)	60,000	
		Travelling Expenses.....(5)	3,000	1,000
		Freight, Express and Cartage.....(6)	600	600
		Postage.....(7)	500	450
		Telephones and Telegrams.....(8)	5,000	3,800
		Office Stationery, Supplies, Equipment and Furnish- ings.....(11)	25,000	8,000
		Law Books, Books of Reference for Library and Binding of Same.....(11)	40,000	40,000
		Sundries.....(22)	2,000	2,000
			438,100	347,350

Positions (man-years)		Details of Services	Amount	
1967-68	1966-67		1967-68	1966-67
			\$	\$
		Vote 1 (Continued)		
		SUPREME COURT OF CANADA—ADMINISTRATION (Continued)		
		Expenditure		
		1964-65.....	\$ 282,779	
		1965-66.....	296,873	
		1966-67 (estimated).....	310,850	
		EXCHEQUER COURT OF CANADA—ADMINISTRATION		
		Salaried Positions:		
		Executive, Scientific and Professional:		
		(\$16,000-\$18,000)		
1	1	(\$14,000-\$16,000)		
4	3	(\$12,000-\$14,000)		
		(\$10,000-\$12,000)		
		Administrative and Foreign Service:		
1	1	(\$8,000-\$10,000)		
		(\$6,000-\$8,000)		
	1	Technical, Operational and Service:		
		(\$6,000-\$8,000)		
		Administrative Support:		
1		(\$8,000-\$10,000)		
10	4	(\$6,000-\$8,000)		
7	11	(\$4,000-\$6,000)		
8	8	(Under \$4,000)		
32 (32)	29 (29)	Salaries (including \$12,000 allotted during 1966-67 from the Finance Contingencies Vote for in- creases in rates of pay).....(1)	198,000	178,000
		Services of Sheriffs, Outside Reporters, etc.....(4)	30,000	30,000
		Court Officials' Travelling Expenses.....(5)	15,000	12,000
		Postage.....(7)	500	300
		Telephones and Telegrams.....(8)	7,000	2,300
		Office Stationery, Supplies, Equipment and Furnish- ings.....(11)	50,000	15,000
		Sundries.....(22)	1,000	500
			301,500	238,100
		Expenditure		
		1964-65.....	\$ 185,195	
		1965-66.....	197,988	
		1966-67 (estimated).....	255,000	
		GRATUITIES TO THE WIDOWS OR SUCH DEFENDENTS AS MAY BE APPROVED BY TREASURY BOARD OF JUDGES WHO DIE WHILE IN OFFICE.....(21)	50,000	50,000
		Expenditure		
		1964-65.....	\$ 24,500	
		1965-66.....	30,833	
		1966-67 (estimated).....	50,000	
		Total, Vote 1.....	3,983,100	2,721,354
		Expenditure		
		1964-65.....	\$ 2,109,413	
		1965-66.....	2,176,144	
		1966-67 (estimated).....	2,874,850	

Positions (man-years)		Details of Services	Amount	
1967-68	1966-67		1967-68	1966-67
			\$	\$
		Statutory—Judges' Salaries, Allowances and pensions		
		SUPREME COURT OF CANADA—JUDGES' SALARIES (CHAP. 159, R.S., AS AMENDED)		
		Salary of Chief Justice of Canada.....	35,000	35,000
		Puisne judges, (8 at \$30,000).....	240,000	240,000
		(1)	275,000	275,000
		Expenditure		
		1964-65..... \$ 275,000		
		1965-66..... 275,000		
		1966-67 (estimated)..... 275,000		
		EXCHEQUER COURT OF CANADA—JUDGES' SALARIES INCLUDING DISTRICT JUDGES IN ADMIRALTY, AND TRAVELLING ALLOWANCES, ETC. (CHAP. 159, R.S., AS AMENDED)		
		President of the Exchequer Court of Canada (\$25,000)		
		Puisne Judges (7 at \$21,000)		
		District Judges in Admiralty (4 at \$1,000, 1 at \$800, 1 at \$600, 3 at \$333.33, 1 Surrogate Judge at \$400, 3 District Registrars at \$300)		
		Salaries..... (1)	179,700	179,700
		Travelling Allowances—President and Puisne Judges (5)	8,500	8,500
		Travelling Allowances—Admiralty Judges..... (5)	500	500
			188,700	188,700
		Expenditure		
		1964-65..... \$ 178,163		
		1965-66..... 194,059		
		1966-67 (estimated)..... 190,000		
		STATUTORY—OTHER COURTS—JUDGES' SALARIES AND TRAVELLING ALLOWANCES (CHAP. 159, R.S. AS AMENDED)		
		Judges' Salaries—Other Courts..... (1)	7,099,000	6,847,000
		Judges' Travelling Allowances—Other Courts..... (5)	254,000	254,000
			7,353,000	7,101,000
		(Further Details)		
		Province of Newfoundland.....	170,500	170,500
		Province of Prince Edward Island.....	137,500	137,500
		Province of Nova Scotia.....	320,500	274,500
		Province of New Brunswick.....	335,500	314,500
		Province of Quebec.....	1,895,500	1,832,500
		Province of Ontario.....	2,129,000	2,039,000
		Province of Manitoba.....	447,500	447,500
		Province of Saskatchewan.....	588,500	588,500

Positions (man-years)		Details of Services	Amount	
1967-68	1966-67		1967-68	1966-67
			\$	\$
		Statutory (Continued)		
		Further Details (Continued)		
		Province of Alberta.....	597,500	581,500
		Province of British Columbia.....	831,000	815,000
			7,453,000	7,201,000
		Less—Anticipated lapses in salaries.....	100,000	100,000
			7,253,000	7,101,000
		Expenditure		
		1964-65..... \$ 6,771,882		
		1965-66..... 6,996,865		
		1966-67 (estimated)..... 7,250,000		
		STATUTORY—NORTH WEST TERRITORIES—JUDGE'S SALARY AND TRAVELLING ALLOWANCE (CHAP. 159, R.S. AS AMENDED)		
		Salary of Judge..... (1)	21,000	21,000
		Travelling Allowance..... (5)	4,000	4,000
			25,000	25,000
		Expenditure		
		1964-65..... \$ 24,083		
		1965-66..... 24,965		
		1966-67 (estimated)..... 25,000		
		STATUTORY—YUKON TERRITORY—JUDGE'S SALARY AND TRAVELLING ALLOWANCE (CHAP. 159, R.S. AS AMENDED)		
		Salary of Judge..... (1)	21,000	21,000
		Travelling Allowance..... (5)	1,000	1,000
			22,000	22,000
		Expenditure		
		1961-65..... \$ 22,063		
		1965-66..... 22,805		
		1966-67 (estimated)..... 22,000		
		STATUTORY—PENSIONS UNDER THE JUDGES ACT (CHAP. 159, R.S. AS AMENDED)..... (21)	1,650,000	1,400,000
		Expenditure		
		1964-65..... \$ 1,366,577		
		1965-66..... 1,516,829		
		1966-67 (estimated)..... 1,575,000		
		Total, Statutory Item.....	9,513,700	9,011,700
		Expenditure		
		1964-65..... \$ 8,637,768		
		1965-66..... 9,030,523		
		1966-67 (estimated)..... 9,337,000		

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, JUNE 27, 1967

RESPECTING

Main Estimates 1967-68, Department of Justice

The Hon. Pierre-Elliot Trudeau, Minister.

WITNESS:

From the Department of Justice: Mr. D. H. Christie, Director
of the Criminal Law Section.

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STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (High Park)
Vice-Chairman: Mr. Yves Forest

and

¹ Mr. Addison,	Mr. Guay,	Mr. Otto,
Mr. Aiken,	Mr. Honey,	Mr. Pugh,
Mr. Cantin,	Mr. Latulippe,	Mr. Ryan,
Mr. Choquette,	Mr. MacEwan,	Mr. Scott (<i>Danforth</i>),
Mr. Gilbert,	Mr. Mandziuk,	Mr. Tolmie,
Mr. Goyer,	Mr. McQuaid,	Mr. Wahn,
Mr. Grafftey,	Mr. Nielsen,	Mr. Whelan,
		Mr. Woolliams—24.

(Quorum 8)

¹ Replaced by Mr. Brown, Tuesday, June 20, 1967.

Timothy D. Ray,
Clerk of the Committee.

ORDERS OF REFERENCE

MONDAY, June 19, 1967.

Ordered,—That the quorum of the Standing Committee on Justice and Legal Affairs be reduced from 13 to 8 Members.

Ordered,—That the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records), be referred to the Standing Committee on Justice and Legal Affairs.

TUESDAY, June 20, 1967.

Ordered,—That the name of Mr. Brown be substituted for that of Mr. Addison on the Standing Committee on Justice and Legal Affairs.

MONDAY, June 26, 1967.

Ordered,—That the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts, be referred to the Standing Committee on Justice and Legal Affairs.

TUESDAY, June 27, 1967.

Ordered,—That the Minutes of Proceedings and the Evidence taken during the past Session before the Standing Committee on Justice and Legal Affairs in relation to Bill C-192, An Act to amend the Criminal Code (Destruction of Criminal Records), be referred to the Standing Committee on Justice and Legal Affairs and become part of the records of that Committee when it is considering the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records).

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

TUESDAY, June 27, 1967.
(2)

The Standing Committee on Justice and Legal Affairs met this day at 11.20 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Gilbert, Goyer, MacEwan, McQuaid, Ryan, Tolmie (10).

In attendance: From the Department of Justice: Hon. P.-E. Trudeau, Minister; Mr. D. S. Maxwell, Deputy Minister; Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

The Chairman called Item 1 of the Main Estimates 1967-68 of the Department of Justice and introduced the Minister of Justice who, in turn, introduced the various officials present.

The Minister made a statement, and was questioned by the Committee.

At 1.15 p.m., the questioning continuing, the meeting adjourned until Thursday, June 28, 1967.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, June 27, 1967.

The Chairman: Gentlemen, we have a quorum. Will the meeting please come to order.

I would like to report that Mr. James Brown has replaced Mr. John Addison as a member of the Committee. Unfortunately Mr. Brown is not here this morning and we cannot welcome him to the Committee.

The main estimates of the Department of Justice for the year 1967-68 have been referred to the Committee. You will find them on page 248, with the particulars on page 249 and the succeeding pages.

I will now proceed to call Item 1 of the estimates and we will then proceed to deal with it.

Department of Justice

1. Administration, including grants and contributions as detailed in the Estimates, gratuities to the widows or such dependents as may be approved by Treasury Board of Judges who die while in office and authority to make recoverable advances for the administration of justice on behalf of the governments of the Northwest Territories and the Yukon Territory, \$3,983,100.

I would like to introduce the Minister of Justice, who of course needs no introduction to the members of the House. He has had a very distinguished scholastic career and now he is carving out for himself a distinguished career as Minister of Justice and Attorney General of Canada.

I am going to invite Mr. Trudeau to make a statement, but before doing so I would ask him to introduce those of his officials from the Department who are with him.

(translation)

• (11.30 a.m.)

Hon. Pierre Elliot Trudeau (Minister of Justice and Attorney General of Canada): Thank you, Mr. Chairman. I thank you for

this nice introduction which will undoubtedly be transmitted to my electors through the reporters present here.

I should like first to introduce to you Mr. Maxwell, my deputy-minister and Mr. Beddoe, who is sitting at the right of Mr. Maxwell. He is the person in my Department who deals with figures better than anybody else; he is also the chief accountant. And, finally I should like to introduce to you Mr. Christie, who handles chiefly the divisions relating to criminal law. He is here because we have been thinking that the members of the Committee might wish to ask us questions in this connection.

First of all, I shall read a statement and, I believe, that the agenda which will follow will lead us to study the estimates.

(English)

This is the first occasion on which a statement has been made concerning the Estimates of the Department of Justice since the proclamation of the Government Organization Act 1966 on October 1 last.

Honourable members will know that the Reorganization Act has operated to transfer to other Ministers various branches of the public service that previously fell under the superintendence of the Minister of Justice. The result, of course, is that the Department of Justice, as established by the original Act of 1868, remains virtually unaltered and the duties and responsibilities of the Minister of Justice and Attorney General of Canada under that Act remain the same.

Although ministerial responsibility for certain branches of the public service has been transferred to other Ministers, responsibility for the institution and conduct of prosecutions under the federal field of jurisdiction remains with the Attorney General of Canada. Thus, although supervision of the R.C.M. Police is now transferred to the Solicitor General, prosecutions resulting from police investigations continue to be the responsibility of the Attorney General of Canada and are conducted

ed by him and his officers. Similarly, Combines prosecutions continue to be conducted by the Attorney General of Canada. While ministerial function in relation to the Director under the Combines Investigation Act and the Restrictive Trade Practices Commission is now the responsibility of another Minister, the decision to prosecute and the conduct of a prosecution in any particular case continues to be the responsibility of the Attorney General of Canada.

The Minister of Justice and Attorney General of Canada continues to be responsible for providing legal services to the government as set out in the Department of Justice Act. These functions lie principally in four general areas, namely, Advisory, Litigation, Legislation, and Property. The Attorney General of Canada is charged with the duty of advising the government and government departments on matters of law. This involves the giving of legal advice to all government departments and Crown Agencies, such as the CBC and CMHC, on the many day to day problems that arise in those departments and agencies. The Department also conducts civil litigation for and against the Crown, and criminal prosecutions. Although the administration of the Criminal Code is the responsibility of the provinces, there are certain areas of prosecution under other Statutes that come under federal responsibility. The Department prepares all government legislation for Parliament and, as a service to the Northwest Territories and the Yukon Territory, assists them in preparing their ordinances. Finally, the Department conducts property and other legal transactions with members of the public, in the same way that a law department performs these functions for a corporation. There are some related functions. Thus, the Department has the administration of the staffs of the Supreme Court of Canada and the Exchequer Court, and does the administrative work in relation to provincial courts and judges that by the Constitution is the responsibility of the federal government. The Attorney General of Canada is also the Attorney General of the Yukon Territory and the Northwest Territories for the purposes of the Criminal Code, and has responsibility for the constitution, organization, and maintenance of the courts in those territories. Formal documents issued under the Great Seal of Canada are settled and approved in the Department.

It can be readily seen that a large staff of lawyers is required to discharge the responsibilities of the Department and to provide the government with the necessary legal assistance and service that it requires. In this regard, it must be observed—and I am sure did not escape your notice, Mr. Chairman, that our Estimates for the 1967-68 fiscal year provide for an increase of personnel over the previous year. The increase shown in the Estimates is 96 positions but the actual increase is 111 when it is remembered that the Minister's staff is no longer included. In other words, there are in fact 15 members on the Minister's staff which used to be included amongst the number of persons provided for in the Estimates. But now, under a new Treasury Board order, there is a limited sum provided for a Minister's personal staff and the numbers he chooses to hire are up to him provided they are within the total limits of that sum. Perhaps I should say a word or two about what might appear at first blush to be a rather substantial increase of 111 personnel.

It is the intention of the government to provide an integrated legal service along the lines generally recommended by the Report of the Glassco Commission. With this in mind the Department of Justice has recently taken over a substantial number of positions from the Department of National Revenue—their are 29, and I will spell this out later—and we are in the course of taking over an additional 15 odd legal positions from the Department of Defence Production and from the Department of Industry, and other departments will follow. You will remember that one of the recommendations of the Glassco Commission was that the Department of Justice become the mother house for all lawyers in the service of the Government, with two exceptions: External Affairs and the Judge Advocate General's office, as a consequence of which the Department of Justice has been taking in lawyers who until now were in the Department of National Revenue and we will continue to do so with various other Departments that have lawyers. It should, of course, be understood that additions made to the establishment of the Department of Justice for this reason should result, hopefully, in an equivalent reduction in the Estimates of other departments. However, it must also be recognized that additional positions are required because of increasing demands that are made by the government for legal services. To mention a few examples, I might make reference to the legal requirements for the Statutory Revision Commission, the increased workload

resulting from the new collective bargaining processes now in force within the public service, to increased activity in the constitutional law field and to the new demands that will be imposed as a result of the Canada Pension Plan Appeals and the new work of the Immigration Appeal Board. Viewed in the light of these new demands on the Department, the proposed increase for both professional and support positions is not great.

(11.40 a.m.)

I should also mention in this connection the establishment of District Offices of the Department. We recently established District Offices in Montreal and Toronto, and I anticipate we will have a District Office with a staff of approximately 10 legal officers in Vancouver on or about August 1 of this year. You realize that in this area too we are, by establishing district offices, cutting down the overall amounts which presumably would be spent by the Department when it hires lawyers in private practice on an ad hoc basis. We assume, and I think the facts have been demonstrating this, that by keeping lawyers permanently on our staff in these big cities, they will be familiar with the dossiers, the law and they will not have to charge the fees that private lawyers do each time they begin a case anew and have to go through the whole works. It should be understood, of course, that the establishment of District Offices enables the Department of Justice to discharge its responsibilities locally in the areas served by these offices without retaining agents, and this is what I have just been explaining. In addition, experience indicates that a more efficient and generally effective legal service is provided to other departments of government when they can obtain legal assistance from permanent officials on the spot.

Of the 111 new positions, 61 of these are legal officer positions and the balance can be classified generally as 50 support positions. Dealing with the 61 new professional positions, 29 were acquired from the Department of National Revenue, 2 were taken over from Citizenship and Immigration, 1 was established to provide service to the Department of Energy, Mines and Resources, 2 were established to provide assistance to the Statute Revision Commission, 1 for both the Departments of Forestry and Secretary of State, 1 to the Treasury Board in the field of collective bargaining, and 1 has been assigned to the Royal Commission on Security. The re-

maining 24 professional positions will be absorbed in the variety of ways I have indicated, that is, by our District Office in Vancouver and by the new services and obligations that we will be undertaking. Of the 50 support positions that I mentioned, 9 of these were acquired from the Department of National Revenue at the time that integration took place. These support positions are mainly stenographic and clerical.

Mr. Chairman, this is about all I have to say by way of an opening statement. I would be delighted to attempt to answer some of the questions that might be asked. I am thankful that my officials are present, because they are much more experienced in the Department than not only I am but perhaps I ever will be.

The Chairman: Thank you very much, Mr. Trudeau. I am sure members will now take advantage of the opportunity to ask questions. I have Mr. Tolmie, Mr. Gilbert, Mr. Aiken, Mr. Choquette and Mr. Guay in that order on my list.

Mr. Tolmie: Mr. Trudeau, what role does your Department play in examining our Constitution and perhaps making recommendations? Is your Department seized of this as a project?

Mr. Trudeau: The constitutional questions in the past were of course constantly dealt with by the Department in a variety of ways, but the most obvious one was dictating the roles in the process of litigation in which constitutional rights were pleaded by one party or another or wherein we felt there was some constitutional implications. Because of this there have always been constitutional experts in the Department who, as part of their job, would have to research and plead constitutional questions. An obvious example of this is the recent offshore mineral rights case which was pleaded before the Supreme Court in which the pleadings involved very important constitutional problems and problems of international law. Therefore, in that sense the Constitution has always been a concern of the Department.

Mr. Tolmie, perhaps you are referring more specifically to the recent announcement I made of certain people who would be brought in as agents the Department of Justice to assist us more particularly in our constitutional work. This is because everyone knows that the constitutional issue is one which is very much in the forefront today. There have

been proposals made for a number of years by provincial governments; there have been suggestions from the public, the press, and all kinds of organizations for either a revision of the B.N.A. Act or a redrafting of it, or a completely new Constitution, whereas in the past these problems could be dealt with efficiently by government personnel and the personnel of the Department of Justice. For instance, it is not too many years ago that the Fulton-Favreau Formula was largely drafted in the Department of Justice, which was the object of one specific area of constitutional change.

As I said, in the past this was done in the Department, but the situation now is such that we feel it is useful to have people on either a full time or a part-time basis—lawyers of constitutional repute who will be able to address themselves more specifically to such problems on a continuing basis; in other words, not as a result of a pleading in one court of the land or not as a result of some specific initiative such as the Fulton-Favreau Formula initiative but, I repeat, on a continuing basis. For this reason we have felt it important to obtain the assistance of several people, the names of which I have given to the press over the past few weeks and whose job it will be to form a special advisory branch to the Minister on these specific problems. They will be working in co-ordination with the permanent Department and I expect that in future years—and this will probably be reflected in the estimates in future years—the Department of Justice will have people on its staff whose main job is to study constitutional problems, again not on an ad hoc basis but as a permanent one.

The way Federal and Provincial relations have been developing—and this is normal in an industrial state of this magnitude and it is reported that these relations will develop faster, in the future—there will be a constant need for studying constitutional problems, especially in the area of Federal-Provincial relations. There will be a need for establishing our own federal priorities in terms of changing or looking at the Constitution. There will certainly be an intense need of such people until we have resolved the problem of repatriating the Constitution and have a Constitution in Canada for Canadians. This is a very involved problem, as hon. Members know, and it will be one on which specialists will take a great deal of time.

There is also the problem of the Bill of Rights and I will not go into that too deeply.

As you know, the Speech from the Throne mentioned that we would be concerned with the problem of establishing a constitutional Bill of Rights, and the Prime Minister has made reference to this. As hon. members know, this is a very tricky one which I would be glad to talk about at length now or at some other time. You know enough about it to realize that a Bill of Rights, which would be binding on all governments in Canada, would involve very great constitutional thought and research. Does that more or less answer your question?

Mr. Tolmie: Yes it does, Mr. Trudeau. I have one other very broad question. This Government is apparently veering toward certain social reforms. In my opinion at least, we have completed certain very realistic social welfare programs. For example I am alluding to reforms in the divorce field, birth control, lotteries, penal reform and perhaps to the question of drug prices. Your Department no doubt is concerned with this and, as I understand it, your Department would be making amendments to the Criminal Code. What progress has been made in these matters and when would we expect to find legislation to implement some of these proposed reforms?

Mr. Trudeau: Mr. Chairman, with the possible exception of drug prices, which the hon. member mentioned, all the other subjects are under most active consideration by the Department of Justice. The truth is that this Committee has made reports on some of those subjects, which have been very helpful to the Department of Justice, and these have been studied along with various other recommendations, such as those issuing from Committees of the Bar and so on. It is fair to say that the Department now is pretty close to the stage where it can recommend to Cabinet a certain number of changes to the Criminal Code. When I say "pretty close" I mean closer than that. In reality, a large part of the work had been done before I came into the Department and one of the first things my officials had me do was to look at the work that had been done and I can only say there are perhaps some minor refinements that I will want to discuss with them. The plan is to put it before Cabinet in the very near future, say within a matter of a few weeks, in order that we can begin the drafting processes and submit it to Parliament at the very outset in the fall when the House reconvenes.

Mr. Tolmie: I must say, sir, that this is very reassuring. I have one more point. We have had a report out on juvenile delinquency now for a number of years. I realize there are constitutional problems which perhaps are impeding its progress, but could you give the Committee any indication as to what is being done about it and what the prospects are for the future?

Mr. Trudeau: For some reason that escapes me, but it has to do with administration and probably with the Constitution—perhaps my officials will fill me in—this has been done by the Department of the Solicitor General. I believe his estimates were up before the House yesterday and I think they finished last night. Mr. Christie now tells me that this bill is in the drafting process and that it is under the jurisdiction of the Department of the Solicitor General as a matter of administrative convenience. It was taken by him when the division of functions took place between Justice, the Solicitor General and the Registrar General.

Mr. Tolmie: Thank you.

Mr. Gilbert: Mr. Chairman, my first question is a supplementary with regard to the constitutional problem.

Mr. Trudeau: am I right in thinking that the task force that is studying the constitutional law today will prepare a White Paper and that the White Paper will be referred to a special Committee of the House of Commons and the Senate for study?

Mr. Trudeau: Mr. Gilbert, a quick answer would be that you are not right in assuming this. I do not know if this is a clever way of putting intentions in my mind, or at least making me reflect on them, but I would welcome a discussion on it with you, sir, or any other members if they wish to delve into the matter. A straight answer would be that this is not a task force and it is not preparing a White Paper. It is not a task force in the usual sense, because I have not asked these people to do a specific job on some specific point and to report to me at some specific time. I have asked these distinguished lawyers and teachers to sit as advisers to me on constitutional questions in general to establish, as I think I stated on some other occasion, priorities in the long range studies that have been going on and will continue to go on in the Government on constitutional matters. Therefore, they will not publish a White

Paper which will be then turned over to any Committee of Parliament, but on a continuing basis they will advise the Minister and through me, the Cabinet on constitutional points as they arise.

Mr. Gilbert: What is your objection to having this special advisory branch preparing a White Paper so that it can be studied by a Committee of Parliament?

The Chairman: That is rather a leading question.

Mr. Trudeau: Is it in order?

The Chairman: It probably could be phrased in a different way.

Mr. Trudeau: Mr. Chairman, I would be delighted to discuss this phrased this way or some other way.

The Chairman: I do not think it is quite proper to ask the Minister—

Mr. Gilbert: What objections, if any, are there?

The Chairman: —what objection he has to the preparation of a White Paper. This is now in the formulating stages, he is receiving advice and so on, and when a conclusion is reached consideration may then be given to the preparation of a White Paper. I would not take the Minister's remark to be a specific objection to preparing a White Paper. It may become a relevant question at some future time, after the Minister of Justice and others have come to a conclusion as to what should be contained in the White Paper. That is my answer to it.

Mr. Gilbert: Mr. Chairman, I will rephrase that question. What objections, if any, would the Minister—

The Chairman: They are exactly the same words.

Mr. Gilbert: "If any" qualifies it.

Mr. Tolmie: You could say: What are the Minister's views on the proposed White Paper?

Mr. Gilbert: I would ask the hon. member to phrase his own questions.

Mr. Tolmie: We are looking for an answer and I think he knows the answer.

The Chairman: I think the Minister knows what you have in mind and no doubt he has the answer to it.

• (12.00 noon)

Mr. Trudeau: Mr. Chairman, I bow to your wide experience which I realize is valuable because I think you have helped me to formulate a kind of reply which would be best.

I would not care to state whether or not at some time in the future this government or this Minister, or some other government or some other Minister might not find it useful to have a White Paper on the Constitution. It might be me and it might be someone else, and it might be not as far away as I think it should be at the present time, but to express as candidly as possible my own feelings about it now, when I say we are not working toward a White Paper specifically at the present time, I suppose the reason is tied to the whole attitude I have been taking on the Constitution over the past some years.

I think we must realize that the Constitution is the fundamental law and really the only source of obedience in any country. No law has any binding power except under the Constitution, and if there is one precept which we must constantly repeat to ourselves it is the one which Professor Kelson always used to give to his students: "The Constitution must be obeyed". Really, when you are looking at any system of laws you cannot really explain why anybody should obey any law, pay any income tax or even listen to a police officer if it is not because the Constitution says so.

With this wordy preamble I want to express my feeling that there has been a bit of recklessness on constitutional matters in the land over the past some years. I think well-intentioned people, some of them politicians, have—if I may use this expression—played fast and loose with the Constitution and you hear, you know, the idea about the Constitution being 100 years old and that it cannot suit us anymore. But in listening to these expressions on the Constitution I have come to the conclusion that everybody, or nearly everybody—in the land has some way in which he thinks he can improve the Constitution. I dare say I, myself, have a few constitutional changes in my pocket. The trouble is that there is a very clear lack of consensus throughout the land on how the Constitution should be changed.

It takes no great amount of imagination to realize that if you sit down at the same negotiating table members of one provincial government which, for instance, is seeking to obtain extra territorial powers for itself,

members of another provincial government which is seeking to obtain, shall we say, the totality of the direct taxing power for themselves, and the central government which has other feelings on taxing and external affairs, it would be very difficult to negotiate any kind of agreement. It strikes me that we had a very good illustration of this in the very recent past. There was a Fulton-Favreau Formula of amendment devised. It had the agreement of all provinces in Canada and of the federal government, and I dare say that some of the provinces which gave their agreement—I am thinking of some of the western provinces—had shown some reluctance to doing so. But as a matter of compromise everyone gave in and agreed to the Fulton-Favreau Formula, and there it was—a basic constitutional issue.

Then suddenly the government which had accepted it, which had recommended its adoption to the Legislative Assembly and to the people in that particular province, suddenly decided that it did not want it anymore—and for reasons which I respect. I am fighting here the temptation to give my own ideas on the Fulton-Favreau Formula but I am sure it would be out of order, Mr. Chairman. But there it is.

We have this operation which went through all the niceties of joint discussion, agreement and lengthy debate which lasted over two years—I think it began in 1961 or 1962 and continued until 1964 or 1965—and suddenly we do not even have this basic agreement on this point.

If we cannot agree on any mode of amending the Constitution, if we cannot agree on any mode of repatriating the Constitution—and there is no reason to believe that we can because no member of the government which now disagrees has pointed out what it would like to see in its stead and no member of the government side or the opposition has spelt out either what great magic formula it would have to get all the provinces and the federal government in agreement on this—It should be obvious that there is no consensus, to use that hackneyed phrase, on constitutional matters. My feeling is, and I think it is shared by several members of the government, that the time is not now to use the Constitution, as a certain number of people are doing, as a political football. I do not suggest, Mr. Chairman, that this would happen in this Committee, but I have no hesitation in suggesting—and I use the words per-

haps unadvisedly but with glee—that the Constitution has become a political football for a lot of people across the country. To me it appears as a diversionist tactic of governments which find some of their own problems very difficult to solve and which prefer tackling the very big and tough ones which they now cannot be solved because, again, it is a diversionist tactic; it draws attention to the difficult problems which no one government alone can solve and, therefore, permits too many people, in my mind, to say: “Well, you now the first thing we must do is change the Constitution.”

After this rather hazardous dissertation Mr. Chairman, I think it follows that if the government were now to say that it was producing a White Paper on the Constitution it would be giving in to what one could almost call the fad of constitutionalism and it would be establishing very high priorities to the whole problem of the Constitution. I should add by way of footnote that if throughout the land, in the provinces, at the level of the central government there were some specific constitutional issues which more or less everyone felt we should tackle now, I would be delighted to give it top priority and to tackle it now—perhaps even produce a White Paper on it, as was done on the Fulton-Favreau formula. But, Mr. Chairman, this is not the case. One just has to leaf through the press and even, indeed, *Hansard* to see that there are all kinds of priorities being established to the constitutional question. Indeed, one only has to look at the position of the parties themselves or to read the speeches of members of the same party within this Parliament and compare them with the speeches of members of the same party in the provinces, and one realizes that even the parties themselves are not any kind of consensus on what could be done with the Constitution.

Under these circumstances I feel it much wiser to keep repeating that Constitution must be obeyed; that we, as a government, are prepared to look at specific suggestions for change, but that we do not find it advisable now to disrupt the fabric of this country by the kind of debate which would arise if all governments in this country were to sit down and pretend to redraft a new Constitution. I think we should bear in mind the experiences of some South American governments which have known hundreds of constitutions in the last century, and at least one European government—I am thinking of France which has known 17 constitutions in 170 years. I do

not think that Canada is a wealthy enough country—wealthy in terms not only of money but of all kinds of human, intellectual and stability resources, to embark upon this kind of constitutional game.

I have just a few words in conclusion, Mr. Chairman. I am sure there will be many questions on this but I want to round out my thought. I think it should be obvious to all hon. members that constitutions have to be made to last. They cannot be made as though they were only temporary or that we were doing something now in order to change it when, in the very near future, new demands will arise. If that were the case there would be a premium on change and there would be an incentive to disobey the Constitution. Every pressure group, and indeed perhaps many political parties, would be advocating change to any Constitution we could hypothetically draft today because they would say: “This is only for now but we need a new Constitution in this area”. There would be, as I say, an incentive to change the Constitution and not to consider it as a lasting document.

I think if we embark upon constitutional negotiations now, the experience of the past two years has shown that it would be what is known in labour negotiations as “open-end” negotiations. If all of us here at this table knew now—perhaps it would not be necessary to get greater agreement than this—what exact constitutional changes we would all be prepared to recommend unanimously, if that were it, I would venture to guess that we could change the Constitution tomorrow. But this is not the way the debate has been developing in the country.

People are throwing forward suggestions for change and they are reserving upon themselves the right tomorrow to throw forth new suggestions. The kind of constitutional gimmick that has been drifting across the land in the past year should be an indication of that.

I mean we have heard just about everything, from the need for a unitary state to the building of a kind of common market for Canada, to the establishment of a Confederation based on two nations—and mind you, not only the French Canadians are using this two-nation idea—to a loose federation composed of associate states, to a situation in which at least one province would want particular status—but then, why only one and why not all, because each province would probably want its own particular status. And there is one other gimmick I think I should mention, the confederation of 10 independent

states. These have all been things which have been seriously proposed by serious people over the past very few years. Mr. Chairman, if there is no more consensus of feeling for the kind of country we want to live in, my suggestion is that we should continue living in the kind of country which in the past 100 years has provided us with one of the highest standards of living in the world in a society which has known probably one of the highest degrees of peace and liberty, and this has been done under the present Constitution.

My suggestion is that until we can establish a broader consensus than is apparent to me now, we should not encourage, by white papers or otherwise, a re-opening of the total debate on the total Constitution.

Mr. Gilbert: I will ask you one or two more short questions. Mr. Trudeau, have you and officials of your Department in mind any changes to the provisions of the Criminal Code concerning bail?

Mr. Trudeau: I have received a fair amount of correspondence on it and even some memoranda from other Ministers. It is one of the subjects which is contained in the memorandum to Cabinet to which I referred to a little earlier and which will be ready in the fairly immediate future.

Mr. Gilbert: Is the Minister and the Department proceeding with the same haste in respect of the expungement of criminal records?

The Chairman: I believe that would come under the jurisdiction of the Solicitor General's Act. This Committee is also studying that subject.

Mr. Gilbert: I did not know whether it came under the jurisdiction of the Solicitor General of the Minister of Justice.

Mr. Trudeau: Well it is under the jurisdiction of the Solicitor General actually. It has to do with the reforms concerning the identification of criminals.

Mr. Gilbert: That is fine. I will yield to someone else, although I have other questions.

Mr. Trudeau: I should apologize to Mr. Gilbert for giving such long answers to short questions. Probably this makes him now feel that he is obligated because of courtesy to yield.

The Chairman: It was a very important question and I think it was a very excellent answer.

Mr. Aiken: Mr. Chairman, I would like to follow another subject just for a moment. When Mr. Tolmie was asking his initial question the subject of divorce legislation was raised and from the Minister's answer I came to the conclusion that some preliminary drafting work has been done in connection with divorce legislation. Would I be correct on that?

Mr. Trudeau: We have just received recently the report of the Roebuck Committee. We in the Department are studying it fervently now. This, too, is something which is promised for the fall. I would not care to say that we have begun drafting any legislation now for the simple reason that the Cabinet itself has not given final instructions that I am to deal with that but it is a topic to which the Cabinet has given very high priority. So in that sense, I think we can expect it to be introduced early in the fall also.

Mr. Aiken: I assume that this report will be made public tonight, but I am not sure our Chairman has better knowledge of this than I have.

The Chairman: I understand that that is the case.

Mr. Aiken: And when the Senate meets it may be reported later today?

The Chairman: Both in the Senate and in the House of Commons at 8 o'clock.

Mr. Aiken: I was merely wanting to probe into whether there had been any settled thoughts in the government's mind on the divorce question before the report was received. Some of us had wondered about this particular subject. However, I think you have cleared it up, that in fact there has been no Cabinet decision on the divorce amendments.

Mr. Trudeau: For the very simple reason that the report has just been handed to me by the Joint Chairmen on, I suppose, an advanced basis. You say it will not be tabled in the House until tonight sir.

The Chairman: It will not be, no.

Mr. Trudeau: Therefore, it has not been into Cabinet. We have discussed the subject but we have not looked at the report.

Mr. Aiken: Several subjects that come under the Criminal Code have been mentioned. Is there any consideration being given to a general revision of the Criminal Code?

Mr. Trudeau: Yes, consideration is being given to it. We in the Department feel that the whole subject of law reform is one with which we will be very concerned in the coming years. The Criminal Code is one area of law reform which we will be tackling, but I am advised by Mr. Christie that we do not have any schedule or deadline on that, that the Criminal Code was overhauled completely in 1953-54 and there is no definite program at the moment to overhaul it.

Mr. Aiken: I would like to turn particularly to the question of detention after arrest. It has been raised under the subject of bail but I would like to make a suggestion rather than ask a question because it seems that the questions on bail that have been raised have not really been broad enough to cover the whole problem of detention and taking into custody.

I think that in many cases the police unnecessarily arrest a person, take him into custody and lodge him in jail when a simple summons to such a person would be quite sufficient. I think there are really two prongs to this problem. The one is bail but the other is more fundamental, that many people should not be arrested in the first instance but merely summoned. Many who are arrested by the police should not necessarily be locked up but should be identified, charged and then released.

I think that if this particular subject is under investigation it perhaps should be a little broader than the simple question of bail. I think on various occasions within the last year or two people have been arrested and placed in custody where there was no doubt whatever that they were perfectly responsible persons, that they would appear for their trial and that the only thing that was necessary was to issue a summons to them. I think this would relieve the whole problem of bail.

I would like to suggest when this is being considered that some thought be given to a revision that would permit the police to make an arrest simply for the purpose of laying a charge and then releasing a suspect rather than arrest automatically being followed by his being lodged in jail.

It is very difficult to get bail. The police have no problem in going to a justice of the

peace and getting an information and a warrant; they have no problem in arresting because they can do it on the spot, but the individual who is arrested, first, may not be guilty, and, second, there are very, very few people who do not appear for their trial. I think it is not only an unnecessary expense to the public but it is also a breach of the civil rights of a lot of people.

I would ask that this additional subject be given very serious consideration because I think that even improving the bail system would not get around the fundamental problem that the police readily consider that they have to lock up everybody that is going to be charged and that they have to keep them locked up. I think an interim solution could be found that would relieve both the public of the expense—and it is an expense—and also the person being charged. I would just like to make that suggestion.

Mr. Trudeau: Mr. Chairman, it is a very welcome suggestion by Mr. Aiken. I can add very little to it. I feel that he has made a very valuable contribution here and, in that connection I can only say that I personally feel very strongly. As a matter of fact, I have pleaded in some cases that there has been unnecessary hardship because the arrest had been proceeded with rather than a summons in the case of people who are very well known and who are very large property owners—where there is no question of trying to escape arrest or anything like that. It causes not only inconvenience and humiliation to them but, as you say, it is done at a cost to the public.

Very often this is done because part of the object of the informant is to make sure that the person against whom he is laying information gets punished by the very arrest itself, which of course is contrary to the whole spirit of our laws. Because one man is annoyed at another and lays an information, he should not be allowed to begin the punishment until the trial has gone through.

Although, as you know, the Criminal Code leaves discretion to the magistrates in many of these cases, I think they too should be advised and perhaps admonished not to issue warrants for an arrest when a mere summons would suffice.

As to what the remedies are, I will ask my officials to keep this question in mind and to advise me on it. I know that under the civil law there are some cases where you could sue for damages. I do not know if under the

common law this constitutes a tort of any kind, but I expect it does not.

D. S. Maxwell (Associate Deputy Minister): It does—false arrest.

Mr. Trudeau: Well it does constitute a tort then, so there is this redress which, in some cases, is open by way of civil litigation. Perhaps this is not enough; perhaps there should be more stringent provisions put down in the criminal statute. However, I imagine we will always have to leave some discretion to the magistrates.

I would like to thank Mr. Aiken for the suggestion, Mr. Chairman.

Mr. Aiken: Mr. Trudeau, I have just one more comment on the matter. I think that the Criminal Code leaves a police officer very little discretion. If he decides to detain a person he is almost obliged to arrest him and place him in a lockup and I think for his own safety and to prevent something kicking back on him, he would much rather lock him up because he can always say that he had reasonable cause to believe that he was guilty or that he might try to escape. However, I am suggesting that perhaps there might be a further provision in the code whereby a person could be detained and charged without being locked up.

Mr. Guay: Mr. Minister, you said some time ago that you foresee a complete reform of the Criminal Code which could last four years. Do you not think that, in the meantime, immediate and priority amendments could be made to the Criminal Code? I have in mind specially the matter of provincial lotteries which often comes back in the form of private bills introduced before the House. I am referring to Sections 221 and following of the Criminal Code.

Mr. Trudeau: Mr. Chairman, I wish to say to the hon. member that if I spoke of a reform of the Criminal Code which might last four years, I was mistaken. I did not intend to say that and I do not think that I mentioned any definite period. I reminded the Committee, I believe, that the last reform of the Code dates back twelve or thirteen years at least and that, in my opinion, it was inadequate. Accordingly, it might be useful for us to examine again the problems of this Code, but during a period not yet specified.

With regard to the specific problem raised by Mr. Guay, I wish to say, Mr. Chairman, that it is a very good suggestion. It is a fact

that the hon. member has already made representations in this regard and I wish to inform the member and the Committee that indeed my Department has made a very careful study of this question of lotteries and that we intend to recommend to the Government to the Cabinet, and to the Council of Ministers, certain reforms in this field.

Mr. Guay: In this matter of amendments to the Criminal Code, Mr. Minister, what are the priorities set up by your Department?

Mr. Trudeau: Do you mean in the field of lotteries particularly?

Mr. Guay: No, I am referring to amendments to the Criminal Code in general. What priorities have been set up?

Mr. Trudeau: Well, Mr. Chairman, we intend to introduce an omnibus bill, rather than come back before Parliament for the purpose of moving certain amendments individually or separately, by means of specific bills. Indeed, we wish to introduce a bill concerning amendments to the Criminal Code and in the bill we shall recommend several amendments to the Criminal Code in the fields mentioned by Mr. Guay and a moment ago by Mr. Tolmie or Mr. Gilbert. And so, I cannot speak of priorities since there will be a common bill.

Mr. Choquette: Birth control, abortion and all similar subjects, are they all covered by this comprehensive amendment?

Mr. Trudeau: Indeed. Birth control involves perhaps also certain amendments to the Food and Drugs Act. With regard to abortion, I must reserve judgment. We have also examined some proposals—in particular, those which have been made by medical associations and even by a committee of the Bar—but this is a very delicate question. I believe that private bills have been introduced before Parliament on this subject. I must honestly confess, however, that I have not formed a definite opinion as yet on this problem. I think that the Act should be amended; however, the way to effect the amendment and to reconcile them not only with social ethics but also with the needs of modern society raises rather serious problems which I am studying. I repeat, this is among the studies which have already been undertaken by my Department. At this time, I dare not say categorically whether these amendments have been included or not in the omnibus bill which I mentioned some time ago.

Mr. Guay: Mr. Minister, will you tell us what you think of the conferences on the constitution that several provincial politicians seem to recommend? In your opinion, should the federal government be represented if such a conference were to be held?

Mr. Trudeau: Mr. Chairman, may I ask the member whether he has in mind a specific project or conferences on the constitution in general?

Mr. Guay: I have in mind conferences on the constitution in general which, it appears, are being recommended at the present time. In fact, Mr. Robarts, as it seems, wants to hold a meeting of all the provincial government leaders for the purpose of studying all the constitutional problems as a whole.

Mr. Trudeau: With regard to conferences on the constitution in general, I shall refer a little to the reply which I gave earlier to Mr. Silbert and especially to the passage where I stated that the Prime Minister (and this has been mentioned in the Throne Speech) had already implied that he would be interested perhaps in holding a federal-provincial conference for the purpose of studying the problem of the Declaration of Human Rights. According to what the Prime Minister has told us, this matter will be discussed during a meeting of the provincial premiers and of the Prime Minister of Canada on the 5th of July next. I believe also that the proposal of Mr. Robarts is on the agenda of this short meeting; furthermore, it would not be proper for me to predict what will be decided during his breakfast working session. I gave you earlier my opinion about this problem and I don't think that I shall be able to say exactly what course will be followed in the conference proposed by the Prime Minister, nor the course which will be followed in the conference proposed by Mr. Robarts.

Mr. Guay: I wish to ask one last question and I shall be very brief. With regard to the committee of experts in constitutional law which has been set up, do you think that it should play more than an advisory role? Should it not eventually be able to make recommendations to ministers and not necessarily by submitting a White Paper or a report? A simple report might be sufficient so as to enable us to make certain amendments to the Constitution or perhaps set up a court in the Constitution for the purpose of settling certain agreement problems or other similar agreements.

Mr. Trudeau: Mr. Chairman, I think that the hon. member is right. This group dealing with constitutional matters will not simply play an advisory role in the sense that it will be there to give me advice when requested to do so. I am hoping that it will make all kinds of recommendations. Perhaps one of the first recommendations to be expected from that group will have to do with the priorities to be set up. Speaking of priorities, I think that the member has given us an interesting example of one of them. I personally would give another priority to the question of a reform of the judicial system, which will enable the court called upon to decide on constitutional questions to have a special composition and special guarantees. The latter would enable it to become an instrument capable of commanding universal respect when ruling on matters pertaining to constitutional fields. No matter whether it be referred to as a constitutional court, whether it be the same Supreme Court differently constituted, or a division of the Supreme Court dealing with constitutional matters, or whether it be a new court entirely independent of the other, these are problems which we are studying, which are quite important and I share the opinion of the member when he says that it is a question which should be given priority.

Mr. Choquette: Mr. Minister, allow me to congratulate you. It is your first appearance in this capacity before the Committee and, in my opinion, you carry out your duties with exceptional skill.

Mr. Minister, I wish once more to draw your attention on a principle which, it seems to me, is obsolete, to wit, that none is supposed to be ignorant of the law. This idea was brought forward again last Friday by the member of Oxford. I am pleased to have instilled this idea into him. It is an assumption which puzzles us, to wit, that none is supposed to be ignorant of the law. Since there are so many pieces of legislation, the average man is definitely not able to meet the requirements set up by this principle. And this brings me to the following question: Is your Department considering the possibility of our starting a mass information campaign concerning the state of our legislation? First of all, can this campaign be undertaken? Has the problem already been studied from some angle with a view to inform the population, that is, the mass of people itself, about the state of our legislation?

Mr. Trudeau: Mr. Chairman, I want first of all to thank the hon. member for his congratulations. His vocabulary is already impressive and once again he has carefully chosen words to speak to me in terms which are quite flattering.

The problem which he raises with regard to this old saying: "None is supposed to be ignorant of the law", is quite real. I need not inform the hon. member—he was a brilliant law student—that this saying comes from Roman law. It is, I believe, a rule within which societies could not operate and I don't think that we can change the intent itself of the saying, but I quite agree with the member that we should modify the implications to a considerable extent. It is a fact that modern societies have increasingly complex systems of legislation and regulation, and in a country such as Canada where there are various levels of government, where there are federative forms of government, there is no doubt that it is still more complicated for a citizen to know within what legal structure he lives and what legal value will be given to his actions or his ambitions. For this reason, I understand the purpose of the hon. member when he asks if action has already been taken by the government in this field. I can mention a few measures from memory.

I know that the Government—unless I am mistaken, this is done through the Department of the Secretary of State—issues pamphlets in which, among other things, the parliamentary system as well as the constitutional system, are explained; the latter, as I said earlier, constitutes nevertheless the fundamental law. It would be important for the citizens to know broadly their rights and their obligations under these fundamental laws.

• (12.45 p.m.)

One must also realize that the government is not the only agency capable of doing this educational work. The bars of the various provinces and the Canadian Bar itself undoubtedly constitute the ideal forum for the promotion of this idea and we know that at least in the province of Quebec the bar has presented television programs for the purpose of informing the public about the legal system which governs them and I would not be astonished that in this field the bars of other provinces have shown themselves as progressive as the bar of the province of Quebec.

It is a fact that the matter of educating the public on his right as a whole . . .

I repeat, it is the task not only of the bar but of various organizations, whether they be

manufacturers' associations, chartered accountants, engineers or the various professional associations. It is the task of these associations to inform their members continuously about amendments of the Act which are important for them. However the government should still give serious consideration to the initiative which the hon. member has mentioned.

As for me, I shall ask my officials to study this question in order to find out whether the public in some priority sectors should be informed about certain amendments to the Act. The member knows that this has been done on particular occasions when, for example, a new department—I am thinking of that of Manpower and Immigration—published new regulations.

I know that it keeps the public well informed through the press and I think that each department should have certain responsibilities in this connection.

The member knows that the Department of Justice is the one where are written all the Acts coming from all the government departments but, in my opinion, it would be too burdensome and certainly not an example of good administration for the department responsible for the writing of these acts, but not for their content, to be the one to advertise the content. In other words, I think that the hon. member who is quite right and justified in asking the Department of Justice this question, should also see to it that other departments who have projects with far-reaching consequences for the public should advertise them.

As far as our department is concerned, Mr. Chairman, I will inform my officials of this matter and I believe this is related to a remark which has been made since I am in Parliament, to wit: That the government is not doing enough to inform the public in which field it is legislating and that since nobody is supposed to be ignorant of the law, it would also be good for the public to be informed what the government is doing on this behalf.

Mr. Choquette: Mr. Minister, the then "International vocation of Quebec" is a slogan which is increasingly being spread on Quebec territory. The Prime Minister of Quebec, Mr. Johnson, has made it its own. A former provincial minister, Mr. Lajoie, agrees with it to such an extent as to declare that the confrontation on the matter of the constitution must take place. In your opinion, the issue of the international ability of Quebec, that is the ability to enter into agreements within the

jurisdictions, is one of the constitutional priorities or do you consider it simply as another means for quibbling?

Mr. Trudeau: This is an interesting question, Mr. Chairman, and I shall try to reply briefly to it.

As a Member of Parliament or minister, I have no objection at all to Quebec or any other province finding an international vocation for itself. As far as I am concerned, I am delighted that the citizens of Quebec are concerned with the problems of international importance and that they wish to play a part in dealing with them. Let me add however, that under the federative system of government such as ours and the international law itself only a central state may have jurisdiction in international matters. The regional states, which are called provinces in the case of Canada, or states in the case of the United States, or which are known by some other name, the governments of provinces, or rather the governments of regions, are not recognized in international law.

And this leads me to say that if the citizens are finding an international vocation for themselves, I rejoice that this is so. However, say to the members of this Committee that this vocation must express itself through the central government. I believe that as citizens concerned with the problems of education, for example, the federal Members of Parliament and all the provinces care much about the vocation of Canada in the field of education, but that does not follow that the central government must legislate in this field. Assuredly, Canada has a vocation in the field of education. Of course, it may be said that education, as town-planning is a question of national interest, but then the sharing of powers between the central government and the provinces must be considered. It must be determined which one of these governments has the jurisdiction on these questions of national interest and here again our Constitution is such that on matters of education, the provinces have jurisdiction. And then, if it is a matter of national interest, we say that the provinces must legislate and must be responsible for their actions in that field. In my opinion, it would not be right for the central government to say to a province: "Your laws in the field of primary education are very bad and we suggest that you prepare better laws." An exception must be made of course is the case provided by Section 93, subsections 3 and 4 of the constitution. Likewise, I believe that if we accept the fact that the extra-territorial power

is given by the constitution to the central government, the latter is responsible for exercising this power and if it does not exercise it properly the citizen should defeat this government at election time.

It does not behoove a province as such to pass judgment on matters which are not within its jurisdiction. Having said this, let me add that the federations, and this is true of all federations, Mr. Chairman, not only the Canadian federation, are confronted with a particular problem in the field of international relations in the sense that if the central government alone has a *locus standi* in international law, it nevertheless cannot put into effect any of the agreements or treaties entered into with other countries because, under the constitution, the matter covered by these treaties is of provincial jurisdiction. This means that there has to be great co-operation between the central government and the provinces in all fields which fall under provincial jurisdiction and are the subject of international agreements. But it would be very naïve on the part of people to think that this is a problem peculiar to Canada. I repeat, that it is a problem that all federations have had to face, whether it be the United States, Switzerland or Germany.

The constitutions of these countries have dealt with these problems and have found solutions from which inspiration can definitely be drawn by Canada for directing its constitutional progress; however, I believe that the basic principle must be recognized that the country can have only one foreign policy and that basically it is why countries federate, or why independent nations confederate. It is precisely to give to a central power jurisdiction over international matters.

If its jurisdiction on international matters could be taken away from the central government by some indirect means or other, I think that this should be interpreted simply of the end of the central state since there are very few fields where one can state with certainty that a uniform procedure should be applied by the entire country. The way we deal with the foreign countries is no doubt one of these cases.

Mr. Chairman, let me add that I do not understand, I do not quite see the perspective of the provincial officials who attach so much importance to their action on the international level. If the population whom they represent, or if the ethnic group whom they represent, has an international vocation, a vo-

cation which goes beyond the physical boundaries of the territory which they occupy, it seems to me that the first task which they must take, the first area where they should express this vocation, should be in the negotiation with other Canadians and with other provinces.

If a province believes that it has an international vocation and that it will be able to express this vocation with advantage within the United Nations, where it will be only one member out of 125 and that it will be able to express this vocation carefully and advantageously at that level, why should it not begin to express that vocation with advantage at the level of negotiations with the federal government or with the other provinces? Indeed, if a province wants to protect the rights, say, of the English language—I am giving a hypothetical example,—and that for so doing it intends to conclude agreements with Great Britain or with the United States, should it not start to conclude agreements with its sister provinces where there are also English-speaking minorities to protect. And once again, if as a member of a language group, of some community, one does not believe that ideas which one considers just will not find acceptance at the federal parliament level where the number of regional groups is limited (where all members of the same country), why should one think of having success within the United Nations?

In short, Mr. Chairman, if Canadians cannot agree among themselves, they who are twenty million inhabitants in number who share the same kind of civilization, that is, the industrial society, if they cannot reach a certain agreement among themselves and negotiate the points which they have in common at the level of the central government, how can they speak of being able to succeed within the world community? There are more than 125 independent countries whose degrees of civilization and industrialisation are quite different.

Mr. Choquette: I have one last question to ask. I have the impression that the minister will quite categorically give a negative answer. It is a rather preposterous question, but I shall ask it nevertheless. Let me explain: certain judgments of the Privy Council must undoubtedly have produced more or less intense reactions since 1867, I am thinking, for example of the ruling which settled the problem of the Labrador boundaries.

I am thinking also of the decision of 193 with regard to international agreements which gives to the federal government sole jurisdiction to negotiate international agreements and specifying with regard to the implementation of these agreements that only the province have jurisdiction when their responsibility was concerned. This, of course, does not seem to please the provincial jurists except those of Quebec.

And now here is the stupendous question which I wish to ask: Has consideration already been given to the possibility of establishing a system of retroactivity so that the judgments of the Supreme Court which might have been annulled by the Judicial Committee of the Privy Council could be put back in force, since the court of the Supreme Court is that of the last instance?

Mr. Trudeau: As a rule, Mr. Chairman, the member asks very brief questions to which I give long answers. He has now asked me a very long question which I think I can answer rather briefly. He has, moreover, suggested the reply: it is no.

Mr. Choquette: Well, since this reply is very short, I shall ask a last question concerning the declaration of human rights. One hears complaints here and there that the declaration of human rights is not always respected by policemen or within our prisons. I am thinking more particularly of these provisions of the declaration which grant the sacred right to any inmate to communicate with his attorney and to be equally informed of the ground of his arrest. Well, we all know that there is a transgression of these provisions in common prisons. Is not the department thinking, for instance, of creating an infringement which would make liable to a fine any policeman who would transgress these provisions of the declaration of human rights. In other words, these provisions remain without effect if the inmate cannot communicate immediately with his attorney and so it would have been useless to insert them in the declaration of human rights. I am wondering whether a new infringement could not be created in order to give some effect to these provisions.

Mr. Trudeau: It is not a question to which a very brief reply may be given, Mr. Chairman, but in a few words I shall say to the member that herein lies the entire problem: the effectiveness of a declaration of rights which is statutory rather than constitutional. The courts have been inclined to interpret the

guarantees given by this statute, by this act, is guarantees which belong to an act among many others. The courts, in general, have not given great priority to this statute over the others. In other words, they apply the statute as long as it is not contradicted by some other statute.

I must say however that in the example mentioned by the member and where there have been many violations, favourable judgments have been rendered. I know of cases, although I cannot quote them from memory, where decisions have been set aside and arrests considered invalid and, consequently there an action for damages could be brought, because the inmate was not allowed to communicate with his attorney in time. The case, in particular, concerned the use in certain provinces of methods relating to the "breathalyzer" test or blood taking. The inmate has not been visited by his attorney in time when these analyses were made and the decision which was rendered by a lower court was reversed during the appeal.

Thus, the protection does exist and I agree with the member that it is not sufficient. It is one of the subjects which we consider as having priority and it is also one of the rea-

sons why the Prime Minister suggests that the first general or constitutional matter which should be dealt with by the provinces and the federal government is that of the problem relating to the protection of human rights.

Mr. Choquette: Thank you Mr. Minister.

(English)

The Chairman: Gentlemen, it is one o'clock. Mr. McQuaid, Mr. MacEwan and Mr. Goyer have indicated they have questions to ask and, no doubt, Mr. Ryan has some also. Possibly some of the Members may wish to have a second turn at questioning. If it meets with your approval we will schedule another meeting for Thursday of this week, to be held in this room at the same time. Is that agreeable to all Members or do you want to go on with your questioning, Mr. McQuaid?

Mr. McQuaid: No, I think we should adjourn, Mr. Chairman.

The Chairman: In that case this meeting is adjourned until the same time on Thursday of this week. This was a very interesting meeting and I am sure we all enjoyed it very much.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

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THURSDAY, JUNE 29, 1967

UNIVERSITY OF TORONTO

Respecting

Main Estimates 1967-68, Department of Justice

The Honourable P. E. Trudeau, Minister

and

WITNESSES:

From the Department of Justice: Mr. D. S. Maxwell, Deputy Minister;
Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie,
Director of the Criminal Law Section.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest
and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,

Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

Timothy D. Ray,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, June 29, 1967.

Ordered,—That the subject-matter of Bill C-4, An Act concerning reform of the bail system, be referred to the Standing Committee on Justice and Legal Affairs.

Attest.

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

REPORT TO THE HOUSE

THURSDAY, June 29, 1967.

SECOND REPORT

In accordance with its Order of Reference of May 25, 1967, your Committee has considered the items listed in the Main Estimates for 1967-68 relating to the Department of Justice.

Your Committee has held two meetings from June 27 to June 29, 1967; and has heard the Honourable P. E. Trudeau, Minister of Justice, and the following witnesses:

From the Department of Justice: Mr. D. S. Maxwell, Deputy Minister; Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

Your Committee commends to the House for its approval the Main Estimates, 1967-68, of the Department of Justice.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos 1, 2 and 3*) is tabled.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, June 29, 1967.

(3)

The Standing Committee on Justice and Legal Affairs met this day at 11.35 a.m. The Chairman, Mr. Cameron, presided.

Members present: Messrs. Aiken, Brown, Cameron (*High Park*), Cantin, Choquette, Guay, Honey, MacEwan, Otto, Tolmie, Whelan (11).

In attendance: From the Department of Justice: Hon. P.-E. Trudeau, Minister; Mr. D. S. Maxwell, Deputy Minister; Mr. E. H. Beddoe, Financial Administration Officer; Mr. D. H. Christie, Director of the Criminal Law Section.

The Chairman announced that the members of the Subcommittee on Agenda and Procedure are Messrs: Aiken, Forest, Gilbert, Wahn and himself as Chairman.

The Chairman then welcomed Mr. Brown.

The members were then invited to resume questioning the Minister and his officials under Item 1 of the Main Estimates, 1967-68, of The Department of Justice.

Following the questioning, the Chairman thanked the Minister and his officials.

Following discussion, it was

Agreed,—That Item 1 carry.

Agreed,—That the Main Estimates, 1967-68 of the Department of Justice carry.

Agreed,—That the Chairman report the Estimates to the House.

At 12.45 p.m., the meeting adjourned to the call of the Chair.

Timothy D. Ray,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, June 29, 1967

The Chairman: I will call the meeting to order.

I would like to announce that the Steering Committee will consist of Messrs. Forest, Kahn, Aiken and Gilbert.

Mr. Tolmie's bill respecting the expunging of criminal records has been referred to us and an Order of the House has been made which makes available to the Committee the evidence taken in the previous session. A bill relating to drug addiction has also been referred to us. I believe the Steering Committee will be meeting very shortly to consider the additional evidence which we may require with respect to Mr. Tolmie's bill and also the witnesses whom we would like to call with respect to the drug addiction bill.

(11.40 a.m.)

We will now carry on with the questioning. I understand Mr. MacEwan has some questions. He is first on the list that has been carried over from Tuesday.

Mr. MacEwan: I will not be long, Mr. Chairman.

Is it correct, Mr. Minister, that there is now an additional section in the Department of Justice which looks after administration or personnel? Has a new one been added?

The Hon. P. E. Trudeau (Minister of Justice and Attorney General of Canada): I will have to ask the Deputy Minister to advise me on that.

I am advised that nothing has been added.

Mr. MacEwan: How many sections are there?

Mr. Trudeau: There are six sections.

Mr. MacEwan: There has been no sections added. Is there any plan to add a new section to the Department?

The Chairman: You may address the Committee directly if you wish.

Mr. Trudeau: Relating to the question whether any sections are to be added Mr. Chairman, I might say that since my arrival in the Department—and I discussed this at some length with the Deputy Minister and the head of the Civil Service, Mr. Carson—I have advocated that a management and organization study be made of the Department. This will probably be done, and at that time we will look at the administrative problems to which the hon. Member has referred.

It is quite obvious that I am a new minister. The Deputy Minister has also only been named in recent months, although he is a young "old hand" in the Department.

He is younger than I am, which makes him pretty young.

I should also like to point out, as I stated in my opening remarks, the fact that the Department has been redefined by the Government Organization Act of 1966. For these reasons I thought it wise to have the advice of the Civil Service Commission with respect to a management and organization study and I expect this will be done fairly soon. Until such time as it is done I am a bit reluctant, shall we say, to make any definitive and overall new administrative arrangements.

Mr. MacEwan: I understand that a lawyer who was formerly with the Civil Service Commission has been with the Department of Justice on a loan basis now for some months. I wonder if the Deputy Minister could advise me if that is correct?

Mr. D. S. Maxwell (Associate Deputy Minister, Department of Justice): You are speaking of Mr. Regan, I presume. Yes, he is head of personnel in our Department.

Mr. MacEwan: Is that presently a separate section or has that change still not taken place?

Mr. Maxwell: No, I do not think I would so describe it. It is part of our administrative operation.

Mr. MacEwan: Yes. If he comes from Nova Scotia he is a good man. I knew him through

the Civil Service Commission and also law school and I was wondering just what his duties were, and so on.

Mr. Whelan: With a name like Regan, how could he be anything else?

Mr. Trudeau: Well, his name is Regan, he is from Nova Scotia and he is a lawyer. That must make him a pretty good person.

Mr. MacEwan: Will the lawyers who are to be added from the various departments, including the Department of National Revenue, now be physically moved to the Justice Building or will they operate in offices of their own departments?

Mr. Maxwell: Some of them will move into the Justice Building, or they will be associated with the operations that we may establish in various cities. However, a corps will have to remain in the Department in order to do certain work that has to be done on the spot.

Mr. MacEwan: But they will report to the Department of Justice?

Mr. Maxwell: Yes.

Mr. MacEwan: Directly to the Department of Justice?

Mr. Maxwell: Yes.

Mr. MacEwan: Finally, I wonder if the Minister or any of his officials could advise me if they have any idea when the commission is expected to complete its work on the revision of the statutes?

Mr. Trudeau: We have been trying to estimate deadlines, Mr. Chairman. These statutes, of course, will be called the Revised Statutes of 1967, which means that the cut-off date is planned for the end of December, 1967. We hope the statutes will appear, with the normal gestation period, some nine months later. They may be a bit overdue but this is what we are aiming at.

Mr. Whelan: You do not expect it to arrive prematurely?

Mr. Trudeau: No, we do not want anything to be half-baked.

Mr. MacEwan: Those are all the questions I have, Mr. Chairman. Thank you.

The Chairman: Mr. McQuaid originally indicated he was going to ask some questions

but he later told me you were going to ask them for him. Mr. Goyer and Mr. Ryan are not here.

Mr. Aiken: Mr. Chairman, I have a supplementary with respect to Mr. MacEwan's last question. I understand that the Department is waiting for the House to pass the Interpretation Act before they complete their work. This holding up the revision in any way?

Mr. Trudeau: It is in this sense, sir, that the Interpretation Act of course, is essential to the statutes as they will appear in the revised form. Our work is now proceeding on the assumption that the Interpretation Act will become legislation. If it does not, it will certainly mean reviewing a lot of the decisions we have made and in some sense it may retard the deadline I mentioned. At present I do not have great cause to suspect that the third reading of the Interpretation Act will not be passed. I would hope, with the cooperation of members of Parliament, that it can be done before the summer recess.

Mr. Aiken: Thank you.

The Chairman: Are there any further questions? Do you have a question, Mr. Brown?

Mr. Brown: No, I do not have a question, Mr. Chairman.

The Chairman: I must apologize, Mr. Brown, for not having welcomed you to the Committee. This is Mr. Brown's first meeting. We welcome you, knowing that you are going to be of tremendous assistance to us.

Mr. Whelan: do you have a question? You were the successor to the Minister of Justice on this Committee I thought you might have a question.

Mr. Whelan: Not at this time, Mr. Chairman.

The Chairman: Mr. Otto?

Mr. Otto: Yes, Mr. Chairman, now that you have invited me. I do not see any provision for money—unless it is for special services—to conduct a review of the different jurisdictions. I realize, of course, that to a great extent this is a provincial matter but some comments have been made in Ontario about modernizing the jurisdictions and changing the administration of certain phases of law from the Supreme Court to the County Court. You will also recall the recommendations of the Divorce Committee and I have heard comments from Law Associations and judges

about the reorganization of mechanics' lien actions and bankruptcies, in the Supreme Court. All of these matters will require a certain amount of study in co-operation with the provinces. Have any monies been allocated for research into this field or is this being considered?

Mr. Trudeau: As Mr. Otto properly says, Mr. Chairman, this problem of the administration of justice per se is within the provincial jurisdictions and the administrative questions are not directly our concern. I think I indicated that in the Department we intend to deal more and more in areas of research and believe the general problem of the efficiency of the administration of justice is the type of problem we might very well look at, but thus far we have no specific projects in mind.

Mr. Otto: No money has been specifically allocated for this?

Mr. Trudeau: No.

Mr. Tolmie: I just have one short question. Mr. Trudeau, a great deal of criticism has been offered concerning the number of convicted people who are sent to prison in Canada. Charges have been levelled that we in Canada send perhaps a higher proportion of convicted people to prison than is the case in any other comparable civilized country. As I understand it, the magistrates have very little discretion at the present time with regard to granting probation or a suspended sentence to individuals who commit more than one offence. Have you considered amending the Criminal Code so that a magistrate would be allowed greater discretion in granting probation to those who have committed more than one offence?

Mr. Trudeau: Yes, Mr. Chairman, we are considering that problem but our considerations are not sufficiently complete at this time for me to report to the members of this committee. It is a very important aspect of the Criminal Code and we are very aware of the problems the member has mentioned. We plan to make this type of amendment as part of the recommendations which will be made to the Cabinet in the course of the summer and which, if they are acceptable, will be before Parliament as part of the omnibus amendment bill to the Criminal Code in the fall.

Mr. Aiken: Mr. Chairman, I have a question for the Minister and then I have several

other questions that are concerned with detail and perhaps you might wish to have someone else answer them.

The first question relates to the appointment of judges. There has been some criticism in the past of the procedures followed in appointing judges and the suggestion has been made that judges ought to be appointed on the recommendation of the provincial Law Societies or after consultation with the provincial Law Societies. I think we have in Canada on the whole an excellent judiciary and an excellent record. There have been some exceptions and I think it would be desirable to eliminate, if possible, even those few exceptions that appear from time to time. Is consideration being given by the Minister to any new procedure or any additional consultation in the appointment of judges, and particularly in the high courts?

Mr. Trudeau: Mr. Chairman, the member has asked a question which will force me to jump the gun, as it were. I have been thinking about this a lot. Quite frankly, I have also been discussing this recommendation with some officials of the Canadian Bar. As the hon. member knows, the Canadian Bar Association has recommended that appointments to the higher courts be made after consultation with a committee of the Bar which is named or designed for such a purpose. I have been thinking about these recommendations very seriously and that is why I used the expression "jump the gun". I have not absolutely decided which way I think it would be best to proceed. As the member knows, a bill was introduced last week by Mr. Robert Stanbury, the member for York-Scarborough, and all lawyers are interested in this debate.

The problem as I see it, and as the member says, is that nominations to the high courts in the past have, I think, been of a remarkably high standard throughout Canada and one is naturally reluctant to change a system that works well. However, even from the point of view of public opinion there is something to be said for consultation with members of the Bar or Law Societies by the Minister of Justice before making such appointments.

What the general public may not realize is that these consultations, so far as I know, always take place. I think one of the reasons the higher courts have had good judges is that as far as I am aware the Ministers of Justice in the past have never made recommendations without consulting in an informal way leading members of the Bar in the respective area or province in which they want

to make an appointment. These consultations are generally held with sitting members of the bench and with persons who are largely in a position to be able to guarantee that the nomination will be as good as possible. I must say that since I have been appointed, although I have not as yet recommended many persons for nomination through the governor in council, I have always done so after consultation with members of the bench, chief justices if possible, members of the bar and even with people who have been designated by the Canadian Bar Association to act as advisers to the Minister of Justice. I have done this informally.

My own intention is not to institutionalize these proceedings yet. What I want to avoid is pressure groups just transferring their activities from one area to another. If any body were designated to be the institutional body which would, as it were, pass recommendations on suggestions by ministers of justice there would be brought up the constitutional problem of whether the Governor in Council can be bound in any way, and I think that the constitution on this is rather clear, that the Governor in Council cannot be bound by the bar or by any other body. On the question of recommendations, I think that consultations have taken place, and should continue to take place, but once again care must be taken to avoid institutionalizing any such procedure in such a way that pressure will just be transferred from one place to another. There is no reason to think the Minister of Justice's judgment, if it is made after consultation with the bodies I suggest, will be any worse than the decision made by any other group.

Mr. Aiken: Mr. Chairman, I would not suggest that a procedure be set up that would take away from the Minister and the Governor in Council the obligation and the responsibility of making these recommendations. The only suggestion I would make is that perhaps a more regular type of consultation should be held with specified groups who would have to take some responsibility in connection with the recommendations. I think the Minister has answered the question very much as I had hoped.

I have some questions, Mr. Chairman, about some individual items in Vote No. 1 which strike me as unusual and about which I would like to get some explanations.

On page 50 of our Estimates there is shown the cost of judges visiting custodial institu-

tions. I have no objection to this; in fact, I think it is an excellent idea. The amount of \$3,000 seems quite small for the number of judges there are in Canada. Is this the total sum that is expended, and in what manner is it made up? Is it for accommodation and travel and does it refer to any particular part of the country? I am objecting, not to the largeness of the amount, but to its smallness if I have any objection at all.

Mr. Trudeau: I think I will ask Mr. Beddoe to advise the Committee on this point, Mr. Chairman.

Mr. E. R. Beddoe (Administrative Officer, Department of Justice): This amount was included in the Estimates as the result of a recommendation in the Fauteux Report of Justice. I think it was recommendation No. 8.

This is actually a token amount that we have provided in our Estimates, and have done for several years, in order that the expenses of any judge who so desires may avail himself of this service.

In the past, \$3,000 has been more than adequate. In 1964, the total expenditure was only \$12. In 1964-65 it was \$608; in 1965-66 it was \$134, and for the year ending March 31, 1966, it amounted to \$934.

Mr. Aiken: Does this mean that the judges are not visiting the institutions or that they are merely not charging their expenses? The amount seems to be a very small amount. I think it would do many of them good if they visited some of the places to which they are sending people in my opinion. It would be more useful to magistrates, frankly, but that is not in their jurisdiction. Is this merely an indication that they are not bothering?

Mr. Beddoe: This would be the indication. We have no record of judges visiting the institutions and not charging. Our Estimates reflect only the actual accounts that we receive from the various judges.

Mr. Aiken: Then it is not really a picture of visits to institutes?

Mr. Beddoe: The picture we have here is only of the actual expenditures that we have made from the Vote for this purpose.

Mr. Aiken: I suppose if we wanted to get accurate information on the visits of judges and magistrates to institutions we would have to go to the Penitentiaries Branch where it would be a matter of record rather than an expenditure.

Mr. Beddoe: Yes, this is true; but there could also be cases of their visiting provincial institutions and I doubt that the Penitentiaries Branch would have a record of that.

Mr. Aiken: Thank you. Similarly, I do not understand the item of transportation expenses of prisoners and escorts and discharged inmates. How does this happen to appear in the Department of Justice Estimates and not in the Solicitor General's Estimates? Does this arise from the division of responsibility?

Mr. Beddoe: No. If you will look at the wording of the Estimates in Vote No. 1, we are authorized to make recoverable advances for the administration of justice in the Northwest Territories and the Yukon Territory. This was an item that was charged to our vote previously but has been taken over the R.C.M.P. They have assumed these costs, and you will see that no amount appears in the current year, 1966-67.

Mr. Aiken: So that that item will now no longer appear in the Estimates of your Department. That is really what I was getting at.

Another item that intrigues me because it was so small, which is unusual in examining Estimates is the contribution of \$200 to the Conference of Commissioners on Uniformity of Legislation in Canada. It does not seem to be very large. Could I have some explanation of why it is there?

Mr. Beddoe: This is the annual levy that is made by the conference on the Department of Justice. It has never been increased, and we have never encouraged that it be.

Mr. Aiken: For how long has this amount of \$200 been appearing.

Mr. Beddoe: To my knowledge it has been going on for five years at least, and possibly more. I would have to refer to my records.

Mr. Aiken: So far as you know, does the federal government contribute in any other way to this conference?

Mr. Beddoe: By the attendance of many of our senior officers, yes.

Mr. Aiken: But does the conference pay for itself, or is it paid for by the provinces? Who maintains the Conference on Uniformity of Legislation?

Mr. Maxwell: I think the answer is that the provinces support the conference, with the

help of a small contribution that it receives from the federal government. I presume that it is self-sustaining on the basis of contributions received from the various people who go to it and support it.

Mr. Aiken: Is this a continuing matter? Does the conference meet regularly?

Mr. Maxwell: Yes.

Mr. Trudeau: Yes, it does; and I know that it has been meeting for a great many years. The amount, as Mr. Beddoe says, is only \$200 for perhaps five years, or more, but this conference is provided for by section 94 of the B.N.A. Act, and it deals essentially with uniformity of legislation among the common law provinces.

Mr. Aiken: Yes.

Mr. Trudeau: Therefore, in a sense, it does not apply directly to the federal government.

I should, perhaps, add that in recent years there have been international conferences on uniformity of legislation and we have just this year decided to become a member of that conference. Therefore, it is not inconceivable that some item similar to this appearing in the provisions next year might be higher.

Mr. Aiken: I know that our own Committee has made several suggestions about uniformity of legislation among the provinces. This may not really be our affair, but they arise relative to such things as motor vehicle legislation, highway traffic regulations and motor safety.

This seems to be a very small item, but if they are not asking for any more and if the conference is proceeding properly I suppose we should not be concerned about it.

Mr. Trudeau: The point is that the federal government has nobody to be uniform with, as it were.

Mr. Aiken: No. This is merely a grant in good faith, to show our interest?

Mr. Trudeau: I suppose so. You, perhaps, may have a point, and that we should show our good faith even more forcefully and perhaps try to encourage more uniformity in the area that you suggest. We feel that, in a sense, we are moving along this line by joining the international organization concerned with uniformity of legislation. It is obviously an important step.

Mr. Aiken: I have just one other question, Mr. Chairman, and it relates to the grant to

the Canadian Corrections Association in connection with the congress held in 1965. This entry seems to have been slightly delayed because there is no expense shown for 1967-68. Was this merely inserted in last year's Estimates as a matter of record, or is it intended to be kept alive?

Mr. Beddoe: No; this was a one-time grant to assist the Association. It was made to the Fifth International Conference. The grant that appears here was to assist in the administrative costs because we were the host country. It is not an annually recurring item.

Mr. Aiken: Presumably it will disappear from next year's Estimates?

Mr. Beddoe: That is true. There is not provision in the current year for it.

Mr. Aiken: Thank you, Mr. Chairman.

The Chairman: Are there any further questions? Mr. Cantin, Mr. Choquette, Mr. Honey, have you any questions?

If not shall Item No. 1 carry.

Yes. Mr. Cantin?

Mr. Cantin: Are we going to hear the details now, or are we just finishing?

The Chairman: So far as I am concerned, I am now going to ask if the Committee is ready to carry the Estimates. Now is the appropriate time to ask any questions you may have, because I doubt that we will be meeting again.

(Translation)

Mr. Cantin: My question is about judges' pensions. Could the Minister tell us if a decision has been taken with regard to a pension to Mr. Justice Landreville?

Mr. Trudeau: Mr. Chairman, I will try to say in a few words what I said in the House in the past few weeks. I am glad that the honourable member has brought the matter up because this Committee is an appropriate one in which to study this question. I have already said that no decision has been made and I repeat this to the Committee this morning. No decision has been taken either for or against the awarding of a pension to Mr. Justice Landreville. However, I can give fresh information to the Committee, taking advantage of the fact that few members of the Press are present...

Mr. Choquette: I see only one.

Mr. Trudeau: ...in saying that I received, three days ago, at the end of the day, on Monday, a letter from Mr. Justice Landreville containing a number of medical certificates indicating that his health has really been affected. These medical certificates indicate that he could no longer continue in his function as a judge even if he were permitted to do so. I wish to tell the Committee that I shall have to answer this letter, of course, which means that within the next few days I shall have to consider the matter. I repeat again, as I said in the House, that I have not made any decision in this regard. These medical certificates, of course, lead me to pay even closer attention to the matter.

• (12.15 p.m.)

The questions that have been brought up in the House in the past few weeks indicate that there is some concern among the members of the Opposition. As far as I am concerned, I shall merely state my position here. I am going to study the matter but I would say that I am not ready to admit as final that any person asked to resign from public office should not be eligible for a pension, whether he be a member of the armed forces, the public service, the Court or even a worker who has had to resign from industrial work. I have consistently refused to say no definitely before deciding whether this pension should be paid, for these two reasons: firstly, that my mind was not made up and that I had not yet seen the supporting medical certificates; and secondly I refuse to say, *a priori*, that any person who resigns from public service employment is not eligible for a pension. This, Mr. Chairman, is what I wanted to convey to the Committee.

Mr. Choquette: Then, this means that it is extremely difficult for you to make a decision on the merits of the case. It will be a political decision.

Mr. Trudeau: I do not know how you are using the word "political". If you are using it in its noble sense from the Greek word *polis* in the interests of the city, it will be a political decision, but only in that sense. I am saying quite frankly that it is a problem that I will have to study very carefully, quite apart from the political approval or disapproval that might ensue. I refuse to decide *a priori* that a man who has not been found guilty of any crime before the courts of the country and consequently is not guilty of anything before the law should be punished.

to the end of his days for the sole reason that he has not carried out his duties in accordance with the very high standards of behaviour expected of our magistrates. For that reason I refused before Parliament to close the matter of a pension. It is a matter that must be considered, and I propose to consider it. And if any members, either here or in the House, have any advice to offer, I will be glad to hear it. What astonishes me is the preconceived idea, indeed the prejudice, on the part of the public and of certain Members of Parliament, especially apparent in the case of Mr. Justice Landreville, which I have not seen in the many other cases where public servants or military personnel have had to resign. I will not be influenced by such prejudice. I am going to study the matter on its merits and will welcome any suggestions anyone may give me in this regard.

Mr. Choquette: I congratulate the Minister on his attitude. It is quite clear. The Committee is perhaps not the place to say it, Mr. Chairman, but his attitude is one of serenity and objectivity. It is clear that the Opposition is trying to persecute Mr. Justice Landreville. I congratulate you on your honest and objective attitude.

● (12.20 p.m.)

(English)

Mr. Aiken: May I ask a supplementary question? This relates to the same general subject. Since the question of Mr. Justice Landreville has come up, one thing that struck me as an observer was that apparently Mr. Justice Landreville, regardless of the rights and the wrongs of the situation, was not clear about what the terms of his appointment as a judge were, or what his duties were as regards conflict of interest, and so on. I believe these have never been defined. The Rand inquiry, as I read it, made an effort to say what judges ought to do, and ought not to do. Mr. Justice Landreville, throughout the hearing, accepted that he had not, as far as he was concerned, breached any of the privileges of his appointment, and that he was not involved in any conflict of interest, and so on. He felt that his clearance by a preliminary inquiry was all that was necessary, and the fact that he was not guilty of a criminal offence was sufficient. Has the Minister given any thought, or does he think it in any way necessary to lay down some more specific instructions or duties to judges at the time of their appointment? At the present time he

takes an oath of office and I presume nothing else. This situation has happened in connection with another judge, too, a former member of the House, who was in jail for some time awaiting charge and was found guilty. I do not know what the status is now; I think there is an appeal. Nevertheless there was some objection that he was paid a salary while he was in jail. Is there any thought in the Minister's mind that some more specific rules of conduct should be laid down for judges to get away from this very vague generalization of history and tradition that they should not do anything wrong, and to what point does this apply? It is very difficult, but it has come to my mind that perhaps there is misunderstanding in some cases about conflict of interest, about how far a judge must be involved in criminal charges before he ought to resign or ought to be asked to resign.

Mr. Trudeau: I think it is a very valid point, Mr. Chairman. The criminal charges and the settlement of them are not the only aspects to be considered in the question of whether a judge should or should not resign, and indeed when I, as Minister of Justice, recommended to Cabinet that the joint address be proceeded with for removal of Mr. Justice Landreville, I indicated that my thoughts on this were the same as those of the hon. member, and as the member knows from reading the address which was brought in before the Senate, I was very careful to make sure that the grounds on which the address was being ruled were spelt out in the address itself. They did not have to do with any criminal conduct, but merely with the failure to meet these very high standards of ethical behaviour which judges in this land are expected to meet. Now the member asks if they should be spelt out with more precision. I think this is eminently a case where precedent and the common law and the moving ethics of a society must be essentially the factors which will guide us. As the member knows, this kind of procedure has never been necessary before in Canada and even in this case it did not have to go through to its termination. If we are to go for another hundred years, or perhaps more, hopefully, before such a thing happens again, I do not think there would be any great need for us now to spell out in advance for a hundred years the kind of ethic which should be guiding judges. I think this is really a moral judgment of the society at that time as guided by Parliament.

As I have answered to the previous questions, I am very grateful for the occasion to speak about this to this Committee, though it is late and I will not hold you much longer, because I want them to know quite frankly of my candor on the subject. I have held the view throughout that as a general proposition no judge should be removable from the bench except for physical or mental reasons, or because of obvious and very grave misconduct. I think this is a fundamental principle of our judicial system: that judges are there to stay. This we believe in very strongly because we do not want either Parliament and even less the Executive interfering in the judicial procedure. If we were to reach a position where judges could be removed by the Executive, or forced to resign by the Executive, or indeed even forced to do so by action of Parliament because of something which is foreign to their conduct as judges, we would be treading on very dangerous ground. There would be all kinds of next steps. You might be able to look into a judge's private life in the past. You might be able to look into his private life in the present, and you might use all kinds of excuses to remove judges because you do not like basically what their judgments are. Of course no government or legislature would remove a judge by saying: Well, we do not agree with his decisions and therefore we are getting rid of him. But we must avoid opening the door to any action which might permit excuses to be used to remove judges the Executive or the legislative functions do not like because of the judgments they render. Once again, this is why I am trying to remain absolutely impartial toward Mr. Justice Landreville, because we must remind ourselves that even in the Rand Report it was stated that the conclusions reached had nothing to do with his conduct on the Bench, that his conduct on the Bench in no way met with reproach from that Commission. Nor does it from me.

Mr. Aiken: Mr. Chairman, I am satisfied the statement the Minister has made is a fair one and I am not proposing that rules of ethics be laid down. I think it would be impossible. But, the other side of the problem which I would like an answer on is a more definite procedure for removing judges. This Landreville Case has probably been one of the most tortuous bits of procedure that could have been gone through, and Mr. Justice Landreville insisted throughout that he was

not guilty of anything and that there was really nobody who could try him. We had the situation where the Law Society made a recommendation of some kind and then a special inquiry was set up and a recommendation made. Then we had a Standing Committee of the House which went through the whole thing again and now a resolution in Parliament. The latter one is the only recognized procedure. We have gone through every bit of torture we could give the man in this particular case without executing him quickly. Could there not have been set up or should there not be a body composed perhaps of fellow judges or partly of fellow judges and partly of other persons, to whom such a question could be referred and whose decision would be the one on which the recommendation to Parliament would be made, instead of going through this tortuous procedure that we went through here. I think that might be the one good thing that has come out of all this.

Mr. Choquette: It was a political issue; that is why we went through all those proceedings. There is only one proceeding. It is impeachment, is it not, Mr. Minister?

Mr. Trudeau: The BNA Act speaks of joint address in both Houses—

Mr. Choquette: Yes.

Mr. Trudeau: —which is not, I suppose impeachment in the historical sense but in any way is what we commonly call impeachment. I share the concern of the hon. member and hope that this has not been used as a precedent since it did not go through to completion. I hope that the way in which the Address was written and the procedure which was stated in various places would be followed might serve as some kind of a precedent because I share the concern of the hon. member that no person accused of anything should be totally unaware of the kind of procedure which will be followed in the study of those accusations. I think this is fundamental.

The Chairman: We are going to lose a quorum.

Mr. Trudeau: Yes, well, I have very little more to say on that.

The Chairman: Mr. Choquette, we are just ready for the vote.

Mr. Choquette: All right, I will stay for a little while.

Mr. Cantin: Can we go along right now with the vote?

(Translation)

Mr. Trudeau: We will vote and then I shall continue to answer your questions.

Mr. Choquette: Yes. I have a plane to take at 1:20.

Mr. Trudeau: If we are ready for the vote—

(English)

Mr. Aiken: I am through with my questions as soon as this one is answered, Mr. Chairman. Has anyone else a question?

Mr. Trudeau: I do not mind staying on to discuss this but if there is no intention to vote against the estimates can we proceed with the votes, Mr. Chairman?

The Chairman: Shall Vote 1 carry?

Item agreed to.

The Chairman: Shall the Main Estimates 1967-68 of the Department of Justice carry?

Some hon. Members: Agreed.

The Chairman: Thank you. Mr. Minister, we will carry on but at this time I do want to thank you for the very clear and very informative answers you gave to questions asked by the members and I would pass the same compliment on to those who have been here with you assisting in that respect.

Mr. Trudeau: In turn, Mr. Chairman, could I thank you and the members of the Committee for the courtesy and understanding with which we have looked at these problems.

Mr. Aiken: Would you consider a more direct procedure set up for the future on removal of judges? There is nothing at the moment. It seems that except for the Address nobody knows what the preliminaries should be.

Mr. Trudeau: My answer is a bit in the same sense as you meant when you mentioned the rules of behaviour and conduct. It is such an infrequently used procedure that the temptation is not to spell it out in too much detail. But I think that if you look through you will find, for instance, that Todd's particular spells out very well what the procedure has been and which has become in common law. I must confess though

that on at least one point the procedure I suggested was different from that which Todd suggested. I would say, Mr. Chairman, that on this question we must be guided essentially by rules of natural justice. These indeed provide that an accused person should know more or less what to expect in the way of procedure. I think these can be summed up in a few general propositions which could be brought down to the following: (a) that the Address itself should spell out clearly the grounds on which removal is being asked; (b) that the Address be brought before both Houses of Parliament; (c) that the accused or the person to whom the Address is directed be allowed to appear and adduce witnesses on his behalf and plead in his defence or refuse to testify if he so wishes and (d) that the hearing be public and he be entitled to counsel if he so desires.

Mr. Aiken: How many hearings should an accused person have, a Royal Commission, a Magistrate's Court, a Committee of the House of Commons and so on? This is where my objection arises. Frankly, I think the right decision has been reached and should have been reached two years ago. But why was it necessary to drag this on and on? Why could not the matter have been decided before taking so many inquiries and going through so many partial inquiries and partial hearings, some at which Mr. Landreville was represented and some at which he was not. This is the thing that bothers me.

Mr. Trudeau: It bothers me too, sir, and I share the hon. member's concern. I hope that in future cases the action one way or another will be a bit more expeditious. Once again under our Constitution this is for Parliament to decide and I think beyond sharing the hope of the hon. member I cannot say more at this time. But I hope the statements I made this morning will be used as some kind of precedent or rules of the game—I should not say "of the game"—rules of conduct. I thank the hon. member. It may be something on which I will ask officials in my Department to prepare a memorandum that can be consulted in future years by future governments.

Mr. Aiken: I think that would be very helpful.

The Chairman: Thank you, members, for being here and helping to make the quorum. The meeting stands adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

LÉON-J. RAYMOND,
The Clerk of the House.

HOUSE OF COMMONS
Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 4

TUESDAY, OCTOBER 31, 1967

RESPECTING
the subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

APPEARING:
Mr. Milton L. Klein, M.P., sponsor of Bill C-96.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,

Mr. Ryan,
Mr. Scott (*Danforth*)
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Fernand Despatie,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, October 31, 1967.

(4)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Forest, Goyer, Grafftey, MacEwan, McQuaid, Pugh, Scott (*Danforth*), Tolmie, Whelan, Woolliams (11).

Also present: Mr. Klein, M.P.

The Chairman read the Order of Reference dated June 26, 1967. He referred to a meeting of the Subcommittee on Agenda and Procedure, held on October 19, 1967.

The Committee proceeded to the consideration of the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts. The Chairman introduced Mr. Milton L. Klein, M.P., sponsor of this Bill.

Mr. Klein made a statement and was questioned thereon.

The Committee agreed that the following documents be made exhibits:

- Article entitled *Methadone—Fighting Fire With Fire*, by Gertrude Samuels, The New York Times Magazine, October 15, 1967 (*Exhibit C-96-1*);
- Extracts from Dr. Donald Louria's book entitled *Nightmare Drugs*, pages 78 to 94 (*Exhibit C-96-2*).

It was also agreed that the suggestions made by Mr. Klein be referred to the Subcommittee on Agenda and Procedure for consideration and subsequent recommendation to the Committee.

The sponsor of the Bill was questioned further and members made comments regarding the procedure to be followed in dealing with the matter before the Committee.

The Chairman thanked Mr. Klein for his representation.

Following an announcement made by the Chairman regarding the next meeting of the Committee, on motion of Mr. Woolliams, seconded by Mr. Forest, it was

Resolved,—That reasonable living and travelling expenses be paid to Messrs. E. A. Spearing, Arthur G. Cookson and James P. Mackey who have been called to appear before this Committee on November 2, 1967, in the matter of Bill C-115.

At 12.35 p.m., the Committee adjourned until Thursday, November 2, 1967.

Fernand Despatie,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, October 31, 1967.

The Chairman: Gentlemen we have a quorum. I would like to take this opportunity of welcoming you back from your vacations in the hope that you are re-invigorated, refreshed and raring to go.

The first order of business is the reading of the Order of Reference dated Monday, June 19, 1967, which we have before us: "Ordered that the subject matter of Bill C-96, An Act respecting observation and treatment of drug addicts, be referred to the Standing Committee on Justice and Legal Affairs." The sponsor of the Bill is our very good friend Milton Klein, Q.C., of Montreal.

The Subcommittee on Agenda and Procedure met on October 19, 1967 with respect to this bill. Mr. Klein was present at a meeting together with Mrs. Rebecca Stotland, who would like to appear before the Committee to give the personal history of a member of her family and also her own views respecting the subject matter of the Bill.

It has also been suggested that Dr. Holmes, who is in charge of the Alcoholism and Drug Addiction Research Foundation in Toronto, might be willing to appear as a witness. Mr. J. MacLeod, Commissioner of the Canadian Penitentiary Service, has indicated that he will be only too willing to attend. I got in touch with Dr. Garneau and I now find, because of a mistake, that it should have been a Dr. Gendron. I have no doubt that he will also be willing to appear. I believe, Mr. Klein, you have the names of one or two other witnesses. Perhaps you could inform the Committee of their names.

Mr. Klein: Yes, I intend to.

The Chairman: All right. I believe I should draw your attention to a memorandum which has been handed to me to the effect that because our proceedings are recorded on tape it is requested that when you are asking questions or making statements you speak as clearly to the microphone as possible in order that you will be recorded clearly and accurately by this equipment.

I know we are all very pleased to have Mr. Klein appear before the Committee. No words of mine are required to introduce him. He is a distinguished lawyer from Montreal, a member of the House of Commons and a person who is vitally interested in social affairs. Without any further remarks, Mr. Klein, would you please proceed.

Mr. Milton Klein, Q.C. (Sponsor of Bill C-96): Mr. Chairman and members of the Committee, I want to particularly thank the Chairman for his kind remarks. I come before this Committee, gentlemen, not as an expert on narcotics or drug addiction but rather from the point of view that as a practising lawyer in Montreal I have always felt that incarceration for drug addiction was not the answer. I do not think a jail sentence solves the problem. On the contrary, it delays the solution of the problem. The subject matter of the Bill is to remove the stigma of a criminal conviction and also to treat the addict as a sick person rather than a criminal. In other words, I am not suggesting that a person who is a drug addict or is in possession of drugs should not be apprehended. I think we ought to continue to apprehend these people, but the moment an addict is apprehended he should become a clinical case rather than a criminal case and the judge before whom he is brought should refer the case to some proper authority rather than take this man and throw him in jail. I think that is society's answer to the problem; they cannot do anything about it, so let us sweep it under the rug and throw him in jail.

• (11.15 a.m.)

Narcotics are administered to sick people and people who take narcotics are sick. All through the centuries we have been stressing sex education; what to do about the birds and the bees. I think in this century we will have to add an additional word and say, "What are we going to do about the birds, the bees and the weeds?" I believe we are having less and less of a problem with the birds and the bees and more and more of a problem with the beads and the weeds.

The question of addiction is the No. 1 problem in the minds of the parents of this

country. There is not a mother and father today who are not concerned that their son or daughter who is attending university is not participating in the use of marijuana. They are very concerned about it. I suggest that it is the duty of the members of Parliament to interest themselves in this problem which, as I say, is not only the No. 1 problem on the campus but has become the No. 1 problem in the high schools.

I asked some high school students what they thought ought to be done about the situation and where should we start. The answer seems to be universal that they are not getting enough information about drugs and drug addiction. The place to start is in the eighth grade of high school when the child is 13 or 14, and from that age on. Although the sniffing of glue is not a narcotic it is in the whole area of narcotics. I believe when a person is arrested on a charge of being in possession of drugs—and I am now making a distinction between the pusher and the person who is participating in drugs or in marijuana—that his name should not be published in the newspapers because in my view it does not help the situation. Do you disagree?

Mr. Woolliams: I do not think you can ever cure anything by keeping it quiet.

Mr. Klein: I am not speaking about keeping it quiet; I am speaking about rehabilitating the person who takes it. Take the case of a young student who is smoking marijuana and gets caught and his or her name is published in the newspaper. I think it does damage to that person to the point where I do not know if they can be rehabilitated afterwards.

Mr. Woolliams: Do you not think it is a deterrent?

Mr. Klein: No. I will deal with that matter right now. I make no distinction between marijuana and narcotics. I do not think this is the time to make such a distinction because I think the situation is too serious. I said that when people sniff glue they do it for the same purpose that people smoke marijuana, to get "high", or whatever it is called in the vernacular. I do not know what it is called.

Mr. Woolliams: They "go on a trip".

Mr. Klein: Whatever it is called; they go on a trip but their parents stay home.

Mr. Scott (Danforth): Are you suggesting that marijuana is a narcotic?

Mr. Klein: I do not know if it is a drug or it is not, but I want to point out that the medical profession is trying to tell the public "Stop smoking because it is not good for you" and yet we have some medical doctors who say that the smoking of marijuana is not harmful. I do not know how they reconcile the two. In any event, I do not think this is the time to give the public any authoritative medical advice on the question of whether marijuana is harmful or not. In my view this is not the time to do that.

Mr. Woolliams: You are not suggesting for a moment that we should hide such knowledge?

Mr. Klein: No, no. I am not talking about hiding knowledge. The medical profession is wrestling with this problem and the court is also wrestling with the same problem. What concerns me a great deal is that this problem seems to be unique to the North American continent. It does not exist to the extent that it exists on this continent, for example, in the countries behind the Iron Curtain. I am suggesting that it should exist there, I am suggesting that it should not exist here. When a person is apprehended—and I am speaking in the context of the question you raised—for using marijuana, let us say, and you publish his or her name and they are convicted, I do not know what sentence you give them but you then have a person who has hit a low.

On the other hand, if you do not expose them—and I am talking about individuals—and convict them but hang over their heads the possibility of conviction if they do not conform to what the judge tells them, I think that is a greater deterrent than the publication of the name or the conviction. I think the threat of exposure is far more important than the actual exposure or the conviction. This is my view.

An hon. Member: You mentioned marijuana in particular.

Mr. Klein: Because marijuana—or LSD or that matter—is hitting an area now where more publicity is being given to it than anything else. I am not singling out marijuana. I am referring to the area of narcotics, and this is not from a medical or scientific point of view, it is from a sociological point of view and I am putting marijuana and

niffing of glue and everything else into that area.

Mr. Scott (Danforth): But how do you quote that with your Bill? You say the real deterrent is the threat of exposure. How does that tie in with the idea that it is really a psychiatric problem and requires medical treatment?

Mr. Klein: I will deal with that now. I believe what is also developing is a new situation in our society. We have always thought of juvenile delinquency in terms of slum areas and with the advent of all these other areas we are talking about juvenile delinquency is no longer limited to the slum areas. Juvenile delinquency is now in the area of the middle and upper middle class.

Mr. Whelan: Was it ever limited to the slum areas?

Mr. Klein: We have always thought of it as an area in which the underprivileged were and only juvenile delinquents.

Mr. Whelan: Is that not because it was published there and not in the other areas?

Mr. Klein: Whatever the reason; but I maintain that for the first time it is beginning to appear in the minds of the people that juvenile delinquency is not the sole province of the slum areas.

Mr. Whelan: It never was.

Mr. Klein: Perhaps it was not. I do not know how many of you gentlemen have read the article which appeared in the magazine edition of the *New York Times* in the issue of October 15, where a team of doctors—I understand the same principle is now being tested in Canada—husband and wife, Dr. Vincent P. Dole and Dr. Mary Nyswander, are now operating a laboratory at the Rockefeller University in New York where they are treating drug addicts with a substitute drug called methadone. I am only giving you the essence of the article but from it I gather that one of the arguments against methadone is that in itself it is an addictive drug.

Mr. Scott (Danforth): Is that not the stuff the hippies are using?

Mr. Klein: No. It is the same name but it is not the same drug.

An hon. Member: It is methedrine, I believe.

Mr. Scott (Danforth): We have an expert with us!

Mr. Klein: We are lucky to have a representative of the hippies present!

The remark has been made by some people: Why treat people with a drug to which they may become addicted? Are you not really substituting scotch for bourbon? The argument which is made is that you simply cannot expect the drug addict—which is one of the reasons for emphasizing that he is sick rather than a criminal—to be taken off the drug; you have to treat him with another drug. As I understand it, when a person is taking methadone, even if you inject heroin, the heroin has no effect when he is under methadone. He does not get high, so to speak, and his need for narcotics or heroin is thereby deadened. There is no longer a craving because it does not affect him any more and the method of applying methadone is comparatively inexpensive.

I would like to make a distinction here. I am not suggesting that the drug addict should be left free. I want to make a distinction between incarceration and confinement. When he is being treated with methadone he may have to be confined to a hospital in order to get this treatment. The Chairman referred to Dr. Holmes, to whom I will make reference later, and when I discussed this question with him over the telephone he referred to this institution in the Vancouver area called Matsqui. He very pointedly said that that institution should not be under the Department of Justice; it should be under the Department of National Health and Welfare.

Mr. Woolliams: I would like to get your ideas on this at this point. Do you think we should be tougher with the peddlers and pushers, particularly keeping in mind the fact that the hippies have now planted marijuana seeds along the Trans-Canada Highway out at Banff and Calgary and in various other areas? It will grow like weeds and it will be very easy to get marijuana. Do you think we should be tougher with those people who are bootlegging this stuff into the country?

• (11.30 a.m.)

Mr. Klein: We are going into this area that we have been reading so much about in the newspapers. Of course, we should do this. I was told yesterday by a doctor whom I hope will appear before this Committee that some of the pushers are deliberately putting heroin into the marijuana in the hope that people will be hooked.

Mr. Woolliams: Taking them in.

Mr. Klein: Yes.

Mr. Woolliams: And that is why marijuana and heroin differ. You can become addicted to one and not to the other.

Mr. Klein: That is correct, and they are using that. Incidentally, one paragraph here, speaking of the drug addict, reads:

He feels he must seek more heroin from the illegal "black market", all the time trying to stay clear of the police and hoping that he won't be sold a "hot shot".

An hon. Member: What is a hot shot?

Mr. Klein: Rat poison, which will kill him.

This article was written—and incidentally, if the Committee is interested I will give you the names of the persons that I or my office have spoken to—by a person named Gertrude Samuels and I think it is exceedingly well written. We have been in touch with her at the *New York Times* and she has indicated that she would be pleased to come before this Committee if the Committee sees fit to call her.

Mr. Scott (Danforth): Is she a reporter or a researcher?

Mr. Klein: No, she is a staff writer for the *New York Times*. The article reads:

The compulsive search for the narcotic "high" soon becomes the addict's whole life: his habit, an advanced state of addiction leaves him functionally disabled. He generally cannot hold a job, continue with school, get enough money by legal means to obtain the heroin, support his family. He is a self-made outcast despised by society.

Periodically, when his habit becomes too large and expensive to maintain, he may seek to withdraw from heroin, using other analgetic drugs to relieve the withdrawal pains. He will accomplish this at a hospital or, if he can obtain withdrawal drugs, on his own. Sometimes he is withdrawn compulsorily because of a jail sentence. In any case, once he achieves withdrawal, he inevitably starts back on the addiction trail.

Once a person takes methadone as the substitute addicted drug it makes him a good member of society again. He can hold a job. All the defects that a person experiences as

a result of taking heroin disappear under methadone. The person does not know the reason for this. It is said that methadone is to the addict—I think this is the gist of it—what insulin is to the diabetic. We do not throw people in jail because they have diabetes. They are sick; therefore they are treated with a drug which is called insulin. Our suggestion is that the addict is also sick and he is being treated with the addicted drug, methadone, which to him is what insulin is to the diabetic.

The Chairman: Mr. Klein, would you be good enough to leave that copy with us?

Mr. Klein: Yes, I will.

The Chairman: It will be filed as an exhibit. Is that agreed?

Some hon. Members: Agreed.

Mr. Klein: If we continue to send people to clinics so they can be dealt with, I think the persons in charge of those clinics will have first-hand information on what to do about these addicts. They will learn more about what to do with them.

I also wish to speak about the families of addicts. These really are the people who suffer most. They are bled dry by the addict; they love the person who has the addiction and they will do anything they can for them. Their situation is even more hopeless than the addict because, as I have said before, at least the addict goes on a "trip", but the family stays home. If you throw a person in jail he becomes a criminal in people's eyes and a stigma is attached to the whole family. I believe that the future of medicine does not lie in psychiatry or in corrective surgery; I think the future lies in what we might call corrective chemistry.

A very interesting book has been written by a Dr. Donald Louria entitled "Nightmare Drugs". He is associate professor of medicine at Cornell University; associate physician at Bellevue Hospital; Chairman of the Narcotics Subcommittee of New York City and Chairman of the New York State Council on Drug Addiction. Incidentally, we have been in touch with him and he would also be very pleased to come before this committee.

I would like to read a few paragraphs from this book where the matter of civil commitment of drug addicts is mentioned. It states as follows:

Civil commitment consists of removing an addict to a hospital or rehabilitation centre instead of jail, in the belief

that jail is no cure for addiction. There are several forms of civil commitment used by various states.

First, as in California, addicts who are arrested and convicted of crimes including some felonies, may be sentenced but are referred after conviction to a special authority to be considered for commitment to a "rehabilitation" centre.

Second, as in the State of New York, under the provisions set forth in the Metcalf-Volker Act of 1962, the arrested addict could elect civil commitment in lieu of trial if he was not accused of selling narcotics or of certain felonies.

In other words, if an accused is brought before a judge in New York State and if he appears merely as an addict and not a pusher, or some other particular offence, and simply where he is committed as a result of his being addicted to drugs, he can say to the judge, "I want a civil commitment in this case. I will follow the medical prescription of the institution to which I am committed." After being committed, he could be confined for as long as a year or more for the purpose of taking this treatment. The writer then states:

Third, an addict wanting to be cured may sign himself into a program. In some states he can leave the program whenever he wishes if the entrance was voluntary; in others, it is mandatory to complete the prescribed minimum period specified by the program even if the commitment was voluntary.

Fourth, in some states the civil commitment of an addict may be initiated by relatives, those with whom the addict lives, or certain public health officials, even if no crime has been committed. In New York State this has recently been broadened so that virtually anyone can initiate civil commitment proceedings against an addict.

I mention these things simply because I believe that we are entering an era where we are beginning to recognize, or have recognized for some time, that we must treat them as sick people and not as criminals.

Mr. Chairman, I would be very happy to do this as well if you would like me to do so.

The Chairman: Is it agreed that this may be filed as an exhibit?

Some hon. Members: Agreed.

Mr. Klein: Mr. Chairman, you referred to certain individuals who might be interested in appearing before this Committee, I may say that I have or the secretary in my office has spoken to the following persons, and I would like to report to you their names and comment on their availability to appear before this Committee. Dr. Peter Roper, President of the John Howard Society, who resides in Montreal has indicated that if this Committee would send him an invitation to appear he would be very happy to do so.

Mr. Scott (Danforth): What would be the nature of his presentation? Would he deal with that Society's attempt to rehabilitate these people?

Mr. Klein: I would imagine so. I merely indicated to him the subject matter of the Bill and he indicated what appeared to me to be a strong feeling in favour of coming before this Committee. Miss Isobel McNeill, who is in charge of special research projects of the Alcoholism and Drug Addiction Research Foundation of Toronto, stated that she will come. Dr. Gregory Fraser, the clinical director of the outpatient division of the Alcoholism and Drug Addiction Research Foundation in Toronto, also indicated that he would be very pleased to appear. Dr. Vincent P. Dole of New York City, who is connected with the Rockefeller Institute, stated that he did not know whether he could or would appear but he would send us his comments on the Bill.

Miss Gertrude Samuels, a staff writer on the New York Times magazine section, has indicated that she will come. Dr. J. Naiman, a psychiatrist at the Jewish General Hospital in Montreal whom I understand, wants to initiate a program or has initiated a program of this nature at the Jewish General Hospital in Montreal, has indicated that he would like to come. Dr. B. Cormier, an associate professor at the McGill University Clinic of Forensic Psychiatry, stated that he will come.

I do not know if he is treating patients or whether he is somehow or other associated with them, but I believe he has something to do with the treatment of prisoners in the penitentiaries who are incarcerated because of drug addiction. I may not be right in that. Dr. Donald Louria, the person who wrote this book, an extract of which is now filed as an exhibit, and as I stated he is the associate professor of medicine at Cornell University Medical College and Chairman of the Narcotics Subcommittee of the New York City

Medical Society and Chairman of the New York State Council on Drug Addiction, has stated that he will come. I might mention he stated that he would like to time his appearance some time towards the end of November. Mr. Chairman, you might take note of that. These are the people who have indicated their wish to appear before this Committee.

I might also add that when this Bill was presented I received a letter from the Canadian Mental Health Association stating that they would like to support this Bill, and they asked me for suggestions concerning the manner in which they could support it. I hope that Dr. Griffin or some other member of that organization will come before this Committee, if the Committee agrees with this suggestion.

Mr. Chairman, I would like to conclude by putting forward certain suggestions to the Committee. One of the suggestions I would like to make is that the Committee split itself up into subcommittees of three or five members and go out into the country and hold hearings at the universities or in the high schools and speak to these people and see what can be done about this matter. For example, I think the Committee should visit the Alcoholism and Drug Addiction Research Foundation in Toronto. I think the Committee should visit some of the psychiatric wards and drug addiction wards in the penitentiaries. I also think, although I do not know how this Committee can do it—it could recommend it, in any event—that children should visit these centres because there is nothing that would impress children more than the sight of persons who have reached the bottom as drug addicts and to see what happens to people when they become addicted. They ought to see it, not be told about it. Seeing it may have a traumatic effect on some, but I think it would be worth it to them to go to these centres and see the depths to which a human being can sink when addicted to drugs.

• (11.45 a.m.)

Finally, after this Committee has had the opportunity of hearing some of the witnesses I am certain that it is going to be impressed by them, as I have been by those with whom I have spoken. I am not suggesting that I am not impressed with the others, but I did not speak with them all.

This is a very serious problem. I respectfully submit that the public of Canada would be very grateful to this Committee if it

would, in fact, examine this subject and make such recommendations as it sees fit.

Thank you for being so courteous in hearing me this morning.

The Chairman: Thank you very much, Mr. Klein. Mr. Klein has suggested various witnesses who might be available and willing to appear before this Committee and about visiting different groups or organizations who are dealing with this subject. Perhaps that might be referred to the Steering Committee for study and consideration and recommendation back to the main Committee subject, of course, to anything that any member of the Committee would like to say about it now.

Mr. Scott (Danforth): I think that is a good idea, and I so move.

An hon. Member: I second the motion.

The Chairman: Then it is agreed?

Motion agreed to.

The Chairman: Mr. Klein, we are now at the stage of our proceedings when members are going to question you.

First on my list is Mr. Pugh; then Mr. Woolliams and Mr. Tolmie.

Mr. Pugh: Mr. Chairman, I certainly commend Mr. Klein for bringing forward this Bill, the whole purpose of which is rehabilitation of drug addicts of whatever type. Our best evidence will come from witnesses we call before the Committee. Personally I like to see witnesses.

I would ask you now, sir, about your explanatory notes where you say:

Developments in the fields of medicine and psychiatry tend to establish that drug addiction, when it occurs, results from some type of mental illness or disorder.

That is a very broad statement. Probably the witnesses whom we are going to call will be able to cover it thoroughly before we think about going elsewhere.

As a result of having witnesses we can probably settle in our own minds just such questions as the one contained in your broad statement that addiction results from some type of mental illness or disorder; and secondly, that in the field of medical research and from actual case histories we can determine a percentage of cures and whether

what you suggest in the way of rehabilitation would be a good thing.

As you were speaking I had a number of questions on incarceration, non-publication and the like, but I feel that if we hear these witnesses then probably many of the questions that we have in mind may well be answered. That is all I have to say at the moment, Mr. Chairman.

Mr. Klein: I agree with you completely. As I said at the outset, the people who will come before this Committee are far more capable than I of discussing the facts with you. I do not pretend to have the kind of knowledge necessary for this Committee to make any decisions upon. That is why these witnesses should be called. I quite agree with you.

Mr. Pugh: With all due deference to the press, I think we should get the best evidence by calling these people rather than someone like Miss Samuels who is a staffer and who, naturally, is going to make a good article out of this subject. She has probably seen and interviewed a number of witnesses herself, but I rather feel that we should get the evidence from competent witnesses, from Canada, if possible.

Mr. Klein: Yes. I merely presented these names with the object of indicating an area in which information could be obtained. Relative to one of the questions you raised it is interesting to note that one of the headlines in this article in the *New York Times* is, "How long will they take methadone?" and the answer is "Maybe for a lifetime."

Mr. Pugh: I noticed that one of the other headings in the article was "Fighting Fire with Fire."

Mr. Klein: Yes.

Mr. Pugh: That is all I have to say at this time, Mr. Chairman.

The Chairman: Mr. Woolliams, you are next.

Mr. Woolliams: I would like to join with Mr. Pugh in congratulating Mr. Klein on his presentation of a very thoughtful brief. It deals with what is probably one of the most serious problems facing the youth of today, particularly the use of marijuana and what goes on afterwards. I may be rather jumping the gun relative to the Bill itself, but I wish to bring to your attention something about which although I may be influenced the

opposite way eventually, I have pretty well made up my mind. I have read subclauses (a) and (b) of clause 2, but it is (c) that really concerns me. I do not believe that the medical and psychiatric evidence called will assist us in this. It says:

(c) it shall be within the discretion of the Judge or Magistrate before whom the drug addict is appearing to decide whether the charge already laid against him shall be proceeded with.

I have always taken the position—and you being a lawyer will, I think, agree with me—that whatever kind of protection you may have your rights flow from the law, not people. Let us consider the giving of that kind of discretion to a judge or magistrate. Perhaps I am being a bit unkind to both this morning, but they are not trained in this field; in fact, many articles are appearing today in jurisprudence that suggest that judges have special training or at least have some assistance from experts, when they are passing sentence on any crime under the Code. They do not have special training. They are lawyers appointed from offices. Sometimes they are corporation lawyers with no experience in the field of criminal law. Naturally, with their background and training in law school, finally they become experienced on the bench, just as a lawyer gains experience in his office, but, to come to grips with this, to give a judge or a magistrate the discretion in whether a charge should be proceeded with does not, I think, solve the problem. That is my first thought.

It may be that examination of the drug and narcotics act in the Criminal Code would indicate changes should be made. I had the experience this summer of defending three university students in a case involving marijuana. It is rather shocking that the courts of appeal in the various provinces have so differed in this regard the judges have pretty well taken the position now that they cannot fine in lieu of imprisonment; they have to pass some form of sentence; they can imprison and fine.

Now, the Court of British Columbia disagrees with that, but the Court of Alberta takes the opposite view. In order to get around the very serious situation of these high school students from another country who had been found smoking marijuana at Banff the judge incarcerated them for one day and fined them \$500. The sentence was passed at 3.30 in the afternoon, so in fact

they never had to serve that time. I use this as an illustration because it may be that the penalty provisions of the Narcotic Control Act require some change. To have a magistrate able, under the law, to direct that it is a case for rehabilitation, or that a person go to a hospital, or to a medical centre where he is going to be cured, instead of being incarcerated and called a criminal, I would go along with, but I do not agree that a judge or a magistrate should have the power of deciding whether or not a charge should be proceeded with.

First of all, I do not think they are sufficiently skilled in the field, and, secondly, human nature being what it is, I feel that the protection of the liberty of the individual should still flow from the law, not people. That kind of discretion, whether it be ministerial or judicial, always gives me concern.

My second thought deals with your suggestion that M.P.'s might cross the country and visit universities for observation purposes. There is a limit to that. I have sat as a member of Parliament both on the government and opposition sides. Many of us are members of several committees and have particular jobs to do from day to day in the House. There has been some criticism—and perhaps all of us should take a look at our own records—on absenteeism. We cannot do our jobs in the House of Commons if we are absent for lengthy periods. It might be done at a time when the House is adjourned, but this would mean that we would really have no holiday at all. A member of Parliament has to use the two-month adjournment of the House to go about his constituency finding out things which will affect his work in the next session and what are the reactions of the leaders of the community and of his constituents. Many of us work harder when the House is not sitting and are glad when the House reconvenes so we can have a rest.

The fact is, I doubt whether we could afford the time.

Mr. Klein: May I interrupt for one moment?

Mr. Woolliams: Yes, certainly.

Mr. Klein: I agree with the last statement. I am of the opinion that parliaments of Canada in recent years have been legislating too much.

Mr. Woolliams: I am glad you agree with me.

Mr. Klein: I do.

Mr. Woolliams: That may be true. It is, however, very difficult for members of Parliament, who have responsibilities to other committees, to leave the House for a week or ten days on a trip of this nature.

I think I agree with Mr. Pugh's suggestion that we call the witnesses first and do as good a job as we can in committee.

I have one other thought or criticism. I have never felt that one can cure anything by hiding it. I know it is hard on the individual. It may be a university student, who does not want his name to appear, or his family may not want his name to appear because they think their son is a swan, but I do not think you ever cure anything by hiding it. The publicity given to the subject today in newspapers and periodicals has, I think, somewhat motivated you in bringing your Bill on this subject so forcibly and thoughtfully before the Committee. As far as I am concerned, I do not think we should say the press should be excluded.

Mr. Klein: I am not suggesting that at all. I am not suggesting that publicity ought not be given to persons who are apprehended, but that the names ought not to be published. We do not allow the name of a minor to be published because it will affect him in later life. I am talking about students who might innocently—although I do not want to use the word “innocent”—be attracted to marijuana, who might take it once and get caught the one time they took it. If that happens and their names are exposed in the newspapers I think they are finished.

Mr. Woolliams: Yes, but do you know how the three girls I defended reacted? They did not worry about the trial, or what the punishment was, but what mother and father and the university president would say because they were scholarship children.

Mr. Klein: Yes, of course.

Mr. Woolliams: So, to me it was no deterrent. That is what they were concerned about.

Mr. Klein: Obviously it was not a deterrent in the case of those three girls. We are going into a different area when we are speaking about that but I am in full agreement that you have to expose but when you expose beyond a certain limit it becomes promotion.

• (noon)

Mr. Woolliams: But then I do not have control.

Mr. Klein: You can put an article in the paper, but it depends on how you put it in. You might put it in with a splashing headline, or you might put it in as the New York Times does without headlines. But you will notice when a big headline is splashed across a newspaper that a person went haywire in Texas and shot eight people from a tower, somehow or other two weeks later it happens in New York or in some other place. So, there must be a balance between exposure and the danger of promotion.

Mr. Woolliams: Well, those are my thoughts. Thank you, Mr. Chairman.

The Chairman: Have you a supplementary question, Mr. Pugh?

Mr. Pugh: I will hold it.

Mr. Tolmie: Mr. Chairman, like the other members of the Committee I congratulate Mr. Klein on his Bill. However, I do feel that we are going to gain anything from the Bill we have to restrict it to the actual intent of the Bill. I do not think we can get launched into an investigation of drug addiction in a general sense. I would have to give up the idea of crossing the country as M.P.s investigating drug research centres and so forth a lot of thought before I would agree with it. I think we can achieve something here if we restrict ourselves to the purpose of the Bill as indicated in the explanatory notes.

The purpose of this Bill—and it is a narrow purpose, really, and this is the only way at which we can gain anything—is to remove the stigma of a criminal conviction attached to drug addiction. This is the gist of the entire Bill. I agree with this completely: that if a person is a true addict then, of course, he should not be treated as a criminal. It is beyond his control, there is no intention, there is no criminal intent, and I think it is outdated. Whether this Bill will achieve its purpose, I am not too sure. As I understand the explanation and remarks of Mr. Klein there are actually would be two types of addicts. There is one who is charged with a definite offence and therefore would have to appear before a criminal court and be sentenced, and perhaps also be given an opportunity to have some type of treatment. Then there is the other type of addict—and this is the type I think this Bill would deal with—who is an addict per se. He is criminally responsible at the present time. In my opinion this type of person should not come before the courts at all. He should come under sub-clause (a) or

(b); that is, the proper authority, whatever this might be, would investigate the case and assign him to some type of institution where he could get treatment. But sub-clause (c) states:

it shall be within the discretion of the Judge or Magistrate before whom a drug addict is appearing to decide whether the charge already laid against him shall be proceeded with.

I think that in order to make this Bill meaningful, sub-clause (c) should certainly be clarified. I realize that most of these private members' bills give the subject matter and they are subject to a lot of amendments. But, if the purpose of the Bill is that an addict should not be treated as a criminal—and I believe this to be a good purpose—then I think Mr. Klein would agree with me that the actual wording of sub-clause (c) should be changed. It should be so changed that anyone charged with drug addiction does not come before a magistrate or does not come before a criminal court.

This is the person we are trying to protect. We are trying to protect this person from the ignominy and the shame of a criminal record. I understand that in most cases it is not within his strength or his purpose to be able to avoid his condition and therefore it is not criminal. If this can be done, I think this Bill has a lot of merit. The only real point I want to make is that I do not think we should get involved in a general discussion on drug addiction and go off at a tangent. If we stick to the purpose of this Bill, and the evidence brought forth should be restricted to this, then I think we are actually accomplishing something. I would like your comment, Mr. Klein, on my plea to restrict it to a narrow sense of the criminal aspect without dragging in so many other ramifications.

Mr. Klein: First, I would like to say, Mr. Tolmie, that I do not consider this Bill a literary masterpiece and did not intend it to be one. It would make very little difference to me, if this Committee would come to the conclusion that it comes to, whether it uses the text of this Bill or not. I am not interested in the text of the Bill. I am interested only in our agreement that the addict is no longer a criminal but a sick person. That would be good enough for me. I am not interested in whether this Bill is adopted as it is.

Secondly, as I understand it, the Bill itself is not submitted to this Committee but the

subject matter of the Bill is. I think that in discussing the Bill and in discussing the question of drug addiction perhaps it was remiss on my part not to have included in the Bill that we ought to be dealing not only with what to do about the addict when he is already one but what to do with a person before he becomes one, which is perhaps even more important. So, I think that in dealing with it when you have before this Committee men of the calibre which I have suggested, it would be worthwhile to spend the few minutes that it might take to elicit from them what they think ought to be done or what could be done to avoid addiction. That is all. That is my view.

Mr. Tolmie: Just one last remark. I know what you are driving at, Mr. Klein, and again I say that the idea in this Bill is good and I think a witness can give us a lot of very worthwhile information on general drug addiction and preventative means. He also should give us information on the feasibility of not having this considered to be a criminal offence. This is a Bill, the subject matter of which is referred to us, and in order to have a concrete recommendation which perhaps eventually will result in legislation, I feel that the emphasis should be on the criminal aspect of this Bill. The rest is gratuitous; it is good. But if we are going to achieve something, I think most of the evidence should be directed to the substance of the Bill, which is the criminal aspect.

Mr. Pugh: I would like to ask a question, Mr. Tolmie. On this matter of magistrate and judge, we are talking about drug addicts. Who is going to decide whether this man is a drug addict? Surely you would have to have witnesses. Surely the man is entitled to a defence and an adjudication before somebody says: "You are going to be incarcerated in some form or other for rehabilitation." On the sworn statement of two or three people you just cannot incarcerate a man.

Mr. Tolmie: This is not my point at all, Mr. Pugh. My point is simply this. If we come to the conclusion that drug addiction per se without any offence is not a criminal offence then this person should not be charged at all. If this person through investigation is found to be in such condition then he is given any available treatment. I am distinguishing between the drug addict who has committed an offence and who definitely has to come before some type of criminal court and the drug addict who now can be charged for addiction itself. This is wrong because it

is not a criminal offence, and he should not even be charged. He should be investigated by a proper authority to determine his degree of addiction and to be given the necessary treatment to eliminate it if possible.

Mr. Woolliams: Do you think that possession is now considered a major crime?

Mr. Tolmie: Possession of drugs?

Mr. Woolliams: Yes.

Mr. Tolmie: Not necessarily, no.

Mr. Pugh: What about association? Here is a party. There are twenty kids there. They are charged. They are there. We had a case this summer, Mr. Woolliams on this very point where a young girl was in a room and she was charged. She had never ever smoked or done anything at all. She got off eventually but she had to go through the process, the criminal process. How would you treat a case like that?

Mr. Tolmie: I am not cognizant of the actual details of the law with respect to this but if the law states that one associated with drug users can be charged then one should be charged. I am talking about the confirmed addict who comes up before the courts regularly and is convicted. This is the type of person that should not have to come up before the courts because it is a disease. It is not a crime. That is my distinction.

An hon. Member: And first offenders should go to jail?

Mr. Tolmie: No. I say this is the law now. They do not necessarily have to be drug addicts if it is a first offence.

Mr. Forest: Since your purpose is to bring the subject matter before the Committee there seems to be no special reason why you presented this Bill instead of amendments to the Criminal Code or to the Food and Drug Act. Is there any special reason?

Mr. Klein: There is no provision that could adequately be amended in the Criminal Code and the reason it was brought in this fashion is that I do not think that we should amend at least at this stage, the Narcotic Control Act or the Food and Drugs Act with respect to this. I think we are in a period when we have to be rigid about drugs and participation in the taking of drugs. Again I repeat that in my view we have to be rigid even on the question of marijuana at this stage. I do not

now what the future of marijuana will be. But, at this stage, I think we have to be rigid about it.

Mr. Woolliams: But do you not think we go through a phase? At one period in university I may time if you could eat twenty goldfish it was quite a feat.

An hon. Member: What was that?

Mr. Woolliams: Goldfish; they used to swallow goldfish.

Mr. Klein: Except that there are fewer consequences in swallowing goldfish than there are in smoking weeds.

Mr. Woolliams: Oh, I know; but it is a phase we are going through.

Mr. Klein: It may well be. I would hope so.

Mr. Forest: When you say, in subclause (a) by the proper authority to the Attorney General..., what do you mean by "the proper authority"? Would that be the Crown who would that be?

Mr. Klein: What paragraph are you talking about?

Mr. Forest: Subclause (a).

Mr. Klein: The proper authority would be the judge before whom he is brought or the magistrate before whom he is brought because this Bill, as I stated at the outset, provides that the whole thing will begin with the fact that the person has been apprehended. Once he has been apprehended that we want to do is to avoid a criminal conviction and incarceration. It starts when the man is arrested. You may feel that we should go into the areas of civil commitment as they do in New York State but I think that would be a constitutional question because I do not think Parliament could legislate with respect to civil commitment. Only the provinces can legislate on civil commitment. I may be wrong on that but I think that it is a constitutional problem.

Mr. Forest: What about facilities for providing for confinement to a clinic? I understand that in a big city it would not be too much of a problem but what about the small cities?

Mr. Klein: If we can provide jails we can provide clinics. I have been told by a doctor whom I spoke to yesterday—I do not want to mention his name because I do not know

whether he would want his name mentioned but he is attached to the Allan Memorial Institute of the Royal Victoria Hospital of Montreal—that there are facilities for confinement.

Mr. Forest: There are or are not?

Mr. Klein: There are. And when you say: "What about the big centres? If a person is convicted of drug addiction in a small centre he is sent to a jail in a large centre. So, if he can be sent to jail in a large centre he can be sent to a clinic in a large centre."

• (12.15 p.m.)

The Chairman: We are going to have evidence on that.

Mr. Klein: Yes.

Mr. Scott (Danforth): Mr. Chairman, like everybody else, I am not really just questioning Mr. Klein. Because of the importance of the subject I think most of the members are giving their views on how the Committee might proceed and the type of investigation it may undertake.

I agree with everyone who has congratulated our distinguished colleague for bringing this matter before us; it is a very serious and amazingly complex problem. I say first of all, with all kindness, that I think this Bill is a gross oversimplification of an attempt to solve it. It is well-meaning and well-brought forward but mainly it grossly oversimplifies the fact. I would hate to see any reports going out of this Committee indicating to the public that there is some magic solution, whether it be methadone or some other thing that may be available.

Your Bill refers to drug addiction. Drug addiction here is not defined. My studies have indicated that the first time a person takes a shot of heroin he is an addict—right away.

You will recall the Royal Commission on Crime that we had in Ontario and the evidence that came to us from the United States—and our colleagues in the American Congress have done a lot of work in this field. This whole industry is controlled by enormously well-financed and well-organized international syndicates and they are turning out addicts like sausage factories. They even have infiltrated our schools. I was shocked to find on the weekend that certain forms of this are available in the schools my own children attend. I think it is dangerous to suggest that there is any easy or simple

answer: I want to put the opposite case to that made by Mr. Tolmie.

I think if we are going to do a real job on this we should try to get broader terms of reference. But if we do not have the broad terms of reference required, even though our Committee may not come up with an answer it can do as many other committees have done, a tremendous job in public education. I agree with Mr. Woolliams that while we want to treat these people we must try to get into the area of the pushers—the people who make drug addicts of young children. All the articles we read are very disturbing. People are not taking this stuff because they are mentally ill. They start on these minor drugs for thrill purposes. They are not mentally disordered people. The medical evidence is that once they get on the minor drugs they want greater thrills and they graduate into heroin, LSD, and the more dangerous one lately, the sniffing of airplane glue.

Mr. Klein: That is why marijuana in itself is dangerous.

Mr. Scott (Danforth): But we have one of the chief medical people in the American government saying that the use of marijuana is no more dangerous than the excessive use of alcohol. In your Bill you make a basic assumption which I think is completely incorrect, that drug addiction is a mental illness or a disorder.

Mr. Klein: I think the distinction is that once he is addicted he is mentally ill.

Mr. Scott (Danforth): Not at all.

Mr. Klein: It is the fact that he is hooked. You are not hooked, a sane person is not hooked, but once a person is hooked, to use the vernacular, he is sick. Whether he is mentally ill or physically ill, he is sick.

Mr. Scott (Danforth): I cannot agree with you. I think your basic assumption is dangerous. I know some doctors who are drug addicts but they are perfectly competent, intelligent men. They carry on a practice. They are not mentally ill in the sense that you suggest here, where they can go to a clinic. You see, we just do not know enough about the whole problem of drug addiction. That is why I think it is fallacious to say: "Let us confine ourselves to the Bill." We are glad to have the Bill because it brings the whole matter before us. However, I think we should try, if we are going to make a serious attempt at it and not just a superficial run-through, to get staff, as we did in the prices

committee, that we should get expert help and that we should get in the law enforcement agencies. If we could smuggle him in quietly I would like to have Bob Kenned appear before the Committee. He presented a tremendous brief when he was Attorney General of the United States on the whole problem of organized drugs, the way the infiltrate society, corrupt justice and every thing else.

We are at the far end of the sausage factory, as I say, with this Bill. They are being churned out and we want to send them all to clinics. The fact that there are no clinics and there are no trained staff and no money may be immaterial. I assume, Mr. Chairman that it might be wise for the Committee to consider the whole area of investigation that we want to undertake and its limitations before we proceed too far because there have been interesting experiments in Great Britain with an entirely different technique to the one you suggest. Other countries have tried to deal with this whole problem of drug addiction. I think this is a two-fold matter. It is not just a matter of treating people. For example some young people today consider the taking of these minor drugs almost a badge of honour in their particular group.

Mr. Klein: And they do not want it suggested that they are squares.

Mr. Scott (Danforth): I do not know whether they do it. As I say, I do not know myself.

Mr. Woolliams: That is really what I meant of course. It was said in somewhat of a jocular manner. However, it is a phase somewhat of a phase.

Mr. Scott (Danforth): No, I do not agree with that, Mr. Woolliams. I do not think that a single social agency in Canada would support your view. This problem is going to become increasingly difficult and increasingly dangerous among not only the young people but the general population as a whole. We have to try to determine—whether we can do so or would have the authority so to do so—another matter—the extent and the cause of this, if we can, by bringing in experts. I am not sure whether we would be able to do that completely but there is an enormous amount of material available.

Finally, I think that we should be permitted to get into the areas of dealing with the pushers—the people who distribute it, and the need for tremendously increased penalties and law enforcement against this type of

individual. I think an all-embracing study would be far more useful because we are not going to find a quick or an easy answer to something like this.

Mr. Chairman, I hope that the Steering Committee will take under advisement the comments that have been made this morning and others that will be made and perhaps give some consideration to a report back to the House dealing with how far we can go and how serious we want to be. Dealing with this Bill alone would be a very superficial and oversimplification of an extremely dangerous and complex problem. I do not say that with any unkindness to the witness because if it had not been for you we would not have had the subject brought before us.

Mr. Klein: I think I covered it in my remarks, as you did, and suggested that you do the very thing that you are suggesting.

Mr. Scott (Danforth): But I just wanted to put the opposite case to the Committee.

The Chairman: Mr. Scott are you finished?

Mr. Scott (Danforth): Yes, I am. Thank you, Mr. Chairman.

Mr. Tolmie: What you said in reference to my position was not the case at all, Mr. Scott. I simply stated that the subject matter of this Bill relates to the criminal aspect and, as such, our remarks at this particular time should be so directed. If we become involved in the general ramifications of drug addiction we are not even going to deal with this Bill properly. I quite agree that we, as a Committee, should study the entire field of drug addiction but we should have a proper reference before us. That is my position.

Mr. Scott (Danforth): Then I will withdraw the phrase "opposite case."

Mr. Tolmie: Thank you.

Mr. MacEwan: I am glad Mr. Klein brought this Bill forward because it is a very vital and important matter in this country today. Although this Committee has a great responsibility, I think this Bill limits our scope. I hope the Steering Committee will take up this matter immediately and if there is any way—if they decide there is I hope they will refer it back to the Committee—to widen our terms of reference into this matter, that all means let us do so. I do not know about going about the country and so on. I think we should start from home base first

and then, if we decide later on to carry out enquiries at various centres, we can do so.

Mr. Chairman, I think this matter should be gone into immediately by the Steering Committee, having regard to the remarks made, and then we can start from there. If we have to widen the terms of reference perhaps we can do that.

I have a very short question. Mr. Klein, I wondered why you did not bring the intent of this Bill forward by way of an amendment to the Criminal Code because after all there are criminal aspects and so on. It seems to me there have been quite a few separate bills brought forward. We have so many that we will never keep up with them. Did you consider it by way of an amendment to the Criminal Code?

Mr. Klein: Yes, but I came to a certain conclusion. Of course the Committee may come to a different conclusion altogether. As I said before, I am not interested in whether the conclusion is mine, yours or anybody's as long as we come to one. My intention was merely to bring this matter before this Committee. I repeat again, actually you are not dealing with a bill any more. You are not even dealing with this Bill. What you are dealing with is the subject matter of this Bill. So I think you have as wide a reference as you can have when dealing with the subject matter of this Bill. If you come to the conclusion that you want to recommend an amendment to the Criminal Code, then of course that is fine.

Mr. MacEwan: Mr. Chairman, I think our subject matter should include the relevant sections of the Criminal Code because they are important, having to do with the laws of evidence and so on. Perhaps we could consider that. Mr. Chairman, that is all I have to say.

(Translation)

Mr. Goyer: Mr. Chairman, the problem of drugs is not a new one; in Syria, they have been growing drug-producing plants for five thousand years. Various political groups have been responsible for the transportation of drugs from one country to another.

This was the case with Britain, for example. After the invasion of China, Britain introduced drugs into China and began to corrupt the Chinese people, who, today, are reacting strongly against this problem of drugs.

During the recent war between Israel and the Middle Eastern countries, Israel discovered enormous caches of drugs in the desert and today finds herself faced with the great problem of halting the traffic in drugs within her own borders. These drugs were being transported through parts of her territory which formerly belonged to Egypt. Israel gave us the example of a modern country which, in an environment where drugs are very common, has succeeded in combatting this scourge, the drug traffic, by education within her own frontiers.

I feel that this is where our efforts should be directed. A political society must establish priorities. I do not feel that priority should be given at this time to the treatment of drug addicts because our society is not organized to do so in a truly effective manner. I feel that our political society should instead attempt to locate those responsible for the traffic and distribution of drugs, and should try to educate the people on the evils of drug.

If young people today are taking up drugs or similar substances, this is surely a social problem, it is not simply a physical disease and I feel that to try and regard the drug problem as a physical disease is, in short, a waste of time. It is never a waste of time to treat people who are sick, but in a sense it is, because you do not go to the root of the problem.

• (12.30 p.m.)

First of all, I would prefer that we study the bill according to this order of priority: first, we determine what is presently being done to prevent the entry of drugs on the Canadian market, what is being done to trace the people who are distributing drugs in Canada, and what is being done to educate young people to the evils of drugs. Then, we could study the treatment to be given to those who are brought before our courts. I would be very happy to see our prisons used as hospitals now, since there are several categories of criminals who are suffering from mental disorders. That is a problem which is, I feel, financially insurmountable, considering Canada's capacity for production. Hence, we should hear testimony, if possible, (I do not know whether there are any legal problems involved here) from representatives of the RCMP, which is responsible for the application of our laws in this field. We should also hear testimony from representatives of the Department of Justice to find out whether there is any educational campaign going on in Canada. We should also hear

from the representatives of the province. Although this may create a constitutional problem, we should still hear the testimony of the representatives of the provinces, in order to learn whether our schools are doing anything to try and halt the growing use of drugs. Drugs today are not simply causing physical or mental disease in individuals, but in our entire society. It is time that we woke up to the problem. Young people are taking up drugs and similar substances. What are we doing to stop that? How do the distributors proceed to create a market for drugs and similar products? That is something which I would like to know. I find that point of great interest.

(English)

The Chairman: That is all very interesting but my own particular point of view is that if, as a result of the efforts of this Committee we can even come to the conclusion that person who is a drug addict, and I mean drug addict in the full sense of the word, totally incapable of controlling himself, if I want to he can restore himself to normal living by taking that particular drug, we have done a whole lot. I think that is real. What you have in mind, is it not, Mr. Klein? Of course, all these other things are related but this Committee is not so constituted that we could possibly attempt to go into it on a major scale. That is for a special committee which will be set up for that very purpose. I think we can do a great deal, and when we hear competent medical witnesses we will then be able to make up our minds on whether we as a Committee can recommend which would be beneficial.

Mr. Scott (Danforth): May I ask a question? Is it not possible for us to go beyond the general reference of the Bill?

The Chairman: I do not think that is the case, Mr. Scott, but I think there are limitations to what we can expect to accomplish. This Committee has quite a few matters referred to it and if we were to develop them to their fullest extent or went into all the ramifications of the subject matter this Committee alone would take up 100 per cent of the Committee's time. There is no question about that.

Mr. Pugh: Mr. Chairman, this may be a very important start.

The Chairman: That is what I feel.

Mr. Scott (Danforth): Mr. Chairman, will you refer these comments to the Steering Committee? It is obvious that there is a rather broad consensus of opinion around this table that a very thorough look should be taken at this subject matter.

The Chairman: We will certainly get a close-up view of the problem and a close-up view of the method of helping drug addicts to return to normal living. Where we go from there I do not know, but if we can accomplish that much we have done a tremendous job.

Before thanking you, Mr. Klein, I would like to call to the attention of the Committee that there will appear before us on Thursday of this week at 11 o'clock from the Canadian Association of Chiefs of Police Mr. E. A. Spearing, M.B.E., President, who is the Director of Investigation for the CNR at Montreal; Mr. Arthur J. Cookson, Chairman of the Law Amendments Committee, Chief of Police of the City of Regina and Mr. James P. Mackey, Chairman of the Committee that submitted briefs to the Committee on Correc-

tions and who is also the Chief of Police of Metropolitan Toronto.

At this time it might be appropriate to ask for a mover and seconder of a motion that reasonable living and travelling expenses be paid to Messrs. E. A. Spearing, Arthur J. Cookson and James P. Mackey, who have been called to appear before this Committee on November 2, 1967, in the matter of Bill C-115, which is the Bill that has been sponsored by Mr. Tolmie relating to the expunging of criminal records.

Mr. Woolliams: I do not know what you mean by "reasonable" these days, but I so move.

Mr. Forest: I second the motion.

Motion agreed to.

The Chairman: Mr. Klein, I wish to thank you on behalf of the Committee

Some hon. Members: Hear, hear.

The Chairman: You can see the great interest that your subject matter has aroused and we thank you for your presentation.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

THURSDAY, NOVEMBER 2, 1967

RESPECTING

The subject-matter of Bill C-115,

An Act to amend the Criminal Code (Destruction of Criminal Records).

WITNESSES:

Representing the Canadian Association of Chiefs of Police: Messrs. E. A. Spearing, M.B.E., President; James P. Mackey, Past President; Arthur G. Cookson, Second Vice-President, Chairman, Law Amendments Committee; D. N. Cassidy, Secretary-Treasurer; Walter Boyle, Chairman, Crime Prevention and Juvenile Delinquency Committee.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Ryan,
Mr. Scott (*Danforth*),
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Fernand Despatie,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 2, 1967.

(5)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Forest, Grafftey, Guay, MacEwan, McQuaid, Otto, Scott (*Danforth*), Tolmie, Wahn—(13).

In attendance: From the Canadian Association of Chiefs of Police: Messrs. E. A. Spearing, M.B.E., President (Director of Investigation, Canadian National Railways, Montreal, Que.); James P. Mackey, Past President (Chief of Police, Metropolitan Police, Toronto, Ont.); Arthur G. Cookson, Second Vice-President, Chairman, Law Amendments Committee (Chief of Police, Regina, Sask.); D. N. Cassidy, Secretary-Treasurer (Ottawa, Ont.); Walter Boyle, Chairman Crime Prevention and Juvenile Delinquency Committee (Chief of Police, Town of Mount Royal, Que.).

The Chairman referred to the Orders of Reference dated June 19 and 27, 1967 (*see Evidence*).

The Committee proceeded to the consideration of the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records).

It was agreed to have the following documents made exhibits:

- Letter from Mr. W. T. McGrath, Executive Secretary, Canadian Corrections Association, to the Honourable Guy Favreau, Minister of Justice, dated November 4, 1964 (Ordinary Pardon). (*Exhibit C-115-1*)
- Article "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status", by Aidan R. Gough, in the Washington University Law Quarterly, April, 1966. (*Exhibit C-115-2*)
- Text of a resolution passed at the 108th Annual Session of the Synod of the Diocese of Montreal, of the Anglican Church of Canada, on April 19, 1967. (*Exhibit C-115-3*)
- Memorandum for the Parliamentary Committee considering legislation relating to Criminal Records, submitted by Mr. H. L. Goodwin, Q.C., Crown Attorney for the County of Lincoln, Ontario, dated April 20, 1967. (*Exhibit C-115-4*)
- Text of a resolution passed by The Corporation of the Borough of East York on May 1, 1967. (*Exhibit C-115-5*)
- Letter from Mr. A. B. Whitelaw, President, The John Howard Society of Canada, dated May 18, 1967. (*Exhibit C-115-6*)

- Text of a resolution passed by The Canadian Bar Association at its 1967 Annual Meeting, dated September 9, 1967. (*Exhibit C-115-7*)
- Samples of bonding application forms. (*Exhibit C-115-8*)

The Chairman mentioned that the Members of the Committee had been provided with a copy of the brochure *Canada's Parole System*, by Mr. T. George Street, Q.C., Chairman, National Parole Board.

The Chairman introduced Messrs. Spearing, Mackey, Cookson, Cassidy and Boyle.

Mr. Spearing presented a brief on behalf of the Canadian Association of Chiefs of Police.

It was agreed to have the statistical data attached to the brief printed as an appendix to this day's Minutes of Proceedings and Evidence. (*see Appendix B*).

The representatives of the Canadian Association of Chiefs of Police were questioned. They were thanked by the Chairman for their brief and their appearance before the Committee.

At 1.10 p.m., the Committee adjourned to the call of the Chair.

Fernand Despatie,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

The Chairman: Gentlemen, we have a quorum. The Order of Reference that we are dealing with this morning relates to the subject matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records) which was referred to this Committee to deal with, on June 19, 1967.

Mr. Scott (Danforth): I wonder if I could ask a question? Has the Committee had an opportunity yet to consider the suggestions in the drug matter?

(11:10 a.m.)

The Chairman: Not the Steering Committee, Mr. Scott, but the Clerk of the Committee and Mr. Klein, the sponsor of the Bill and I met yesterday. He gave us the list of people who he thought would be valuable to the Committee and they have all been communicated with. We hope to have a report of who will likely be witnesses by the end of the week or at the beginning of next week.

Mr. Scott (Danforth): Will that report also include the discussions we had about the scope of the Committee hearings?

The Chairman: That I am going to take up with the Steering Committee. The Clerk is just writing to the people who had been suggested as witnesses.

Mr. Scott (Danforth): Thank you, Mr. Chairman.

The Chairman: We have two or three who we know now will come. I was going to suggest that the next meetings deal with the matter of bail bond before conviction on Wednesday and Thursday and then the following week go right into the drug situation and deal with it until we are through with it.

Mr. Scott (Danforth): Thank you, Mr. Chairman.

The Chairman: An Order of the House was made on June 27, 1967:

That the Minutes of Proceedings and the Evidence taken during the past Session before the Standing Committee on

Justice and Legal Affairs in relation to Bill C-192, An Act to amend the Criminal Code (Destruction of Criminal Records), be referred to the Standing Committee on Justice and Legal Affairs and become part of the records of that Committee when it is considering the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records).

In other words, the evidence we took in the previous session is available for use of the Committee in dealing with this matter.

Now, before introducing our witnesses, we have a number of documents that I trust the Committee will agree to have filed as exhibits. They consist of a letter from Mr. W. T. McGrath, Executive Secretary of the Canadian Corrections Association to the Honourable Guy Favreau, Minister of Justice, dated November 4, 1964, subject matter, ordinary pardon.

An article entitled "The Expungement of Adjudication Records of Juvenile and Adult Offenders: A Problem of Status", by Aidan R. Gough, in the Washington University Law Quarterly, April, 1966.

Text of a resolution passed at the 108th Annual Session of the Synod of the Diocese of Montreal of the Anglican Church of Canada on April 19, 1967.

Memorandum for the Parliamentary Committee considering legislation relating to Criminal Records, submitted by Mr. L. H. Goodwin, Q.C., Crown Attorney for the County of Lincoln, Ontario, dated April 20, 1967.

Text of a Resolution passed by The Corporation of the Borough of East York on May 1, 1967.

Letter from Mr. A. B. Whitelaw, President of the John Howard Society of Canada, dated May 18, 1967.

Text of a Resolution passed by The Canadian Bar Association at its 1967 Annual Meeting, dated September 9, 1967, and finally, samples of bonding application forms as discussed at the Committee's meeting of April 18, 1967. I trust it is agreed that all these should be filed as exhibits. Is it agreed?

Some hon. Members: Agreed.

Mr. Scott (Danforth): What will happen to them? Will they be printed, or what?

The Chairman: No, they will just be part of the record and anybody who wants to study them and those who are preparing the Committee's report will have the opportunity of reading and studying them as well as any other member of the Committee who wants to read and study them. They will not be printed as appendices.

Mr. Scott (Danforth): Yes.

The Chairman: And the Clerk has the brochure entitled "Canada's Parole System" prepared by Mr. T. George Street, Q.C., Chairman of the National Parole Board and that, I believe, has been distributed to the members this morning.

• (11.15 a.m.)

An hon. Member: Yes.

The Chairman: That completes the formal routine proceedings. It is now my privilege to introduce to the Committee the distinguished representatives from the Canadian Association of Chiefs of Police who are with us this morning. The gentleman to my immediate right is Mr. E. A. Spearing, M.B.E., President and Director of Investigations for the CNR in Montreal. He is the President of the organization. Mr. Arthur G. Cookson, Chairman of Law Amendments Committee and Chief of Police of Regina. Stand up, Mr. Cookson. Mr. James P. Mackey, Chairman of the Committee that submitted brief to the Committee on Corrections. He is the Chief of Police of Metropolitan Toronto. Then we have, in addition, Mr. W. Boyle, Chief of Police, Town of Mount Royal and Mr. Donald Cassidy, Secretary-Treasurer of the Canadian Association of Chiefs of Police. These gentlemen are our panel for today and I know we welcome them sincerely. They are here in an effort to assist the Committee in drawing a report and making a recommendation to Parliament on the evidence that we have heard. I believe you all have a copy of the brief submitted by the Association and I am going to call upon Mr. Spearing.

Mr. E. A. Spearing (President, Canadian Association of Chiefs of Police): Mr. Chairman and members of the House of Commons, as President of the Canadian Association of Chiefs of Police I am pleased with the opportunity of submitting in behalf of that organi-

zation the following brief in the hope it may materially assist in some way the work and conclusions of your Committee.

The Association was established in the year 1905 and among its objectives are:

- The study of modern and progressive practices in the prevention and detection of crime;
- The uniformity of police practices and cooperation for the protection and security of the people of Canada.

The Association feels that the scope of the Criminal Code has as its general and primary purpose the protection of society as a whole. It is appreciated that this embraces several fields including the apprehension, punishment and rehabilitation of criminals, each of which has its place and value in the overall basic purpose of the protection of society. However, this basic purpose should not be lost sight of in our zeal for the rehabilitation of the criminal as now so often appears to be the case. Release from detention does not necessarily mean rehabilitation of the criminal. We believe the protection of society through preventive deterrents and rehabilitation should be the philosophy that governs the correctional process.

Mr. Chairman, I should say at this point mention should be made that the foregoing as well as some of that which follows in the brief, was submitted earlier this year, in the month of March, by this Association in response to an invitation for briefs promulgated by the Canadian Committee on Corrections and which in part dealt with the subject of criminal records. On this particular question the Association replied, and I will now quote:

The existence of a criminal record does not restrict the reformation of the criminal. It should be borne in mind that the expunging of criminal records from the official files will not expunge them from the public records, newspapers, or from the minds of men.

We are opposed to cancelling criminal records based on a period of good behaviour, alleged or otherwise. The absence of a recent conviction may be attributed to many things; absence from Canada, illness, failure of detection or imprisonment.

The expunging of criminal records would present many problems in practical terms to the police to identify and trace persons wanted and suspected

crimes. The record is replete with cases where wanted and suspected persons have been identified, located and brought to justice only through the existence of criminal records.

With the many ramifications of organized and syndicated crime nationally and internationally, and the easy movement of criminals by high-speed aircraft, doing away with criminal records after a period without a known arrest would seriously impede and complicate police action. Many criminals are unknown to the police in the locality in which they operate and their identity only becomes known through the exchange of criminal intelligence, criminal records and information or arrest. Canada's relations with the law enforcement agencies of other countries and with Interpol would be seriously impaired by expunging criminal records.

(11.20 a.m.)

It is not unusual for professional criminals to live a life of crime without arrest or conviction or to go many years without being arrested. For all intents and purposes it might appear to some well-meaning persons that the criminal's so-called period of good behaviour indicates he has reformed. This may not be the case; for instance, a major Canadian criminal, one who currently is actively leading a life of crime, has not been convicted since he was sentenced to serve time in custody for the offence of false pretences at Montreal, in the year 1931 and that was 36 years ago.

That, Mr. Chairman, concludes the brief submitted by the Association to the Canadian Committee on Corrections.

May I add at this time that the subject of Bill C-115 was brought before the Plenary Session of the Canadian Association of Chiefs of Police Annual Conference at Moncton, New Brunswick, in September 1967 and a resolution passed at that time authorized the executive to study this Bill and make whatever presentation it considered advisable to the Committee on Justice and Legal Affairs.

Mr. Chairman, as Bill C-115 deals in part with the offender under 21 years of age, I should like to continue this brief with the following information pertinent to this subject. This Association's Crime Prevention and Juvenile Delinquency Committee studied certain recommendations made by the Depart-

ment of Justice Committee on Juvenile Delinquency and I will now give you the outcome of their deliberations wherein they may be of interest to your Committee; however, before doing so it will be of interest to tell you and your Committee that this Association endorsed by resolution at their 1967 Annual Conference the recommendation of the Justice Committee on Juvenile Delinquency as follows:

Recommendation No. 85 by the Department of Justice Committee on Juvenile Delinquency

Juvenile Court Records should be available for use in disposing of a case against an individual who, having a juvenile court record, is subsequently convicted of an offence in the adult court.

The Canadian Association of Chiefs of Police approve this recommendation. The reasoning given for the recommendation of the Justice Committee on Juvenile Delinquency is contained in paragraph 343 of their report as follows:

The further question is whether official information relating to a person's juvenile court record should be barred, not only to prospective employers, but also to adult courts. We suggest that different considerations apply to these two situations. The ordinary employer is concerned with making profits. He is not performing any public function nor does he represent the community. On the other hand, for the judge properly to fulfil his responsibilities as the community's representative in the sentencing function, he must have available all the relevant facts. One example should suffice to illustrate the distinction: A boy aged thirteen years is sent to a training school for sexual assault of a young child. He is released on his fifteenth birthday and from then until he seeks employment in his eighteenth year he has no further involvement with the law. Unless he is to become a charge on public welfare he must find employment somewhere and in such circumstances it is reasonable to prohibit questions by prospective employers concerning his juvenile offence. Suppose, however, that this same person, now an adult of twenty-five years, is again convicted for sexual assault of a young child. How can the court protect the interests both of the

person being sentenced and of the community without knowledge of his juvenile misconduct? It follows, in our view that juvenile court records should be available for us in disposing of cases against the individual who is subsequently convicted in adult court.

The recommendation, it will be noted, establishes the value of, and the need for records.

• (11.25 a.m.)

Dealing specifically with juveniles and this recommendation being in direct conflict with the obvious intent of subsection of Bill C-115, it is difficult, if not impossible, for us to reconcile the wisdom of the proposed legislation. It has, we submit, its principal weakness in the automatic expungement of the record after conviction on reaching the age of 21 years. It does not take into consideration the person who could be convicted prior to his 21st birthday and is serving or has begun to serve a sentence on that day. We submit that if such legislation is to be considered there most certainly should be a minimum period specified after completion of the sentence, not after conviction. There should also be a hearing before a superior court or other judicial body on proper application being made, and if the application is found to be justified, a court order or certificate to be then issued for the destruction of the criminal record.

A further observation which might be made to the proposed legislation to destroy criminal records at age 21 is it could conceivably encourage the commission of crime by young people at a stage in life when they are easily influenced and temperamentally impetuous. The knowledge that even if convicted of crime they would have no record upon attaining the age of majority could influence their judgment and encourage them to "take a chance".

Law enforcement emphasizes that records, as they concern and involve the criminal and his activity, are an important, essential and vital tool in their work. Records are used in many ways; they indicate *modus operandi* pointing to the wrongdoer and to eventual apprehension and successful prosecution. The same records, during the lifetime of the wrongdoer, are required by the courts and, additionally, by such other organizations as the National Parole Board, correctional institutions and probation services. The value of criminal records has been proven and justified. Police departments across Canada realizing the importance of these records have

voluntarily contributed data to a central bureau in Ottawa. There is a continuous and ever-increasing demand for this information with the ever-increasing crime trends. We are confident that any interference, such as the destruction of records, would seriously impede the work of the police and affect the security and welfare of the country as a whole.

There are other aspects and purposes for which records are utilized of inestimable value and should be mentioned:

- (a) identification of the unidentified dead and living.
- (b) assist in the identification of persons suspected of subversive activities in national and international matters.
- (c) assist in matters relating to travel abroad, for example, the matter of visas. It is considered doubtful that governments of other countries would accept a declaration made by applicants for foreign travel if the basis of a crime-free life meant for a limited time.
- (d) assist in the identification of persons considered for employment in sensitive government positions.
- (e) assist in determining one's suitability or otherwise for employment within the police sphere of activity.

From a statistical point of view, it is obvious that the universe of crimes committed is known only in part. Not all crimes are reported to the police and there is not complete data on total crimes. There are no data on offences reported to the police or persons arrested. There remains the unknown quantity of the relationship between total crime and known crime.

Let us look at crime statistics in Canada. During the year 1966, figures published by the Dominion Bureau of Statistics show there were 702,809 criminal code offences reported by the police, representing an increase of 11.8% over the 628,418 offences reported in 1965.

Mr. Scott (Danforth): Have you any information on how many of those had records?

Mr. Spearing: It comes later.

In the five-year period 1962 to 1966, there has been a 36.5% increase in Criminal Code offences in Canada. Based on rates per 100,000 population 7 years of age and over in 1962 the rate was 3,338.6 for Criminal Code offences and in 1966 it was 4,183.4.

(11.30 a.m.)

There were 182,568 persons charged with Criminal Code offences by the police in 1966 compared to 156,151 in 1962, an increase of 14.9% and a rate change to 1,086.7 in 1966 from 947.5 in 1962.

The annual report of the Commissioner of Penitentiaries for the fiscal year ending March 31, 1967 showed that of 3,401 admissions to penitentiaries, 81.9% had previous commitments to correctional institutions, whereas in 1963, of 3,742 admissions, 76.7% had prior commitments.

In view of the Canadian crime picture and realizing what is happening in the United States of America, we who are responsible for the enforcement of the law in this country are most concerned over any proposed law or laws which will make things easier for the law breaker and more difficult for the victims of crime. Our main objection to Bill C-115 is the generalized form of its draft. We are not without sympathy for the sole criminal but we submit there should not be an automatic destruction of records after 12 years. It is conceivable that a person could have in this 12 year period of time committed crime and evaded arrest or conviction. He could have been out of the country and committed crime without Canadian police authorities being advised. It would seem only logical that before a record is expunged it should follow the submission of an application to a proper judicial authority and after a complete and satisfactory investigation a court order or certificate to be issued to seal the criminal record.

In conclusion, it is our opinion that:

Legislation to expunge the records of individuals is not necessarily the answer to the rehabilitation problem;

As has been pointed out the newspaper morgues, magazine articles, films, are history. We cannot erase history. We cannot erase the memory of man. Criminal records are a matter of public knowledge;

If legislation is to be enacted it should be to prevent employers asking whether a man has a criminal record or not. This legislation would not prohibit law enforcement agencies, reform institutions, and so on from enquiring as to whether the person has a criminal record.

If necessary for an individual to be bonded a bonding company could not turn down the individual because of a

previous record unless a check had been made through the National Parole Board to enquire if the individual would be a good bonding risk.

Attached to this brief are some interesting and informative statistical data for your consideration. They relate to the crime picture in Canada from 1962 to 1966. The source has been the judicial section of the Dominion Bureau of Statistics. The second attachment referred to as a crime capsule contains extracts from the Uniform Crime Reports for the United States for the year 1966 and was prepared by the Federal Bureau of Investigation. The third attachment, Careers in Crime, covers the study of 160,310 criminal histories undertaken and completed by the Federal Bureau of Investigation between 1963 and 1966.

These attachments speak for themselves and are simply submitted as a matter of information for your Committee. That, Mr. Chairman, concludes the brief we wished to present this morning.

The Chairman: Just for the record you might tell us who signed this brief?

Mr. Spearing: Yes sir. This brief is signed by myself, E. A. Spearing, President of the Canadian Association of Chiefs of Police and I am the Director of Investigation, Canadian National Railways; James P. Mackey, one of our Past Presidents, Chief of Police, Metropolitan Toronto; Arthur G. Cookson, our Second Vice-President and the Chairman of our Law Amendments Committee and he is also the Chief of Police of Regina, Saskatchewan; D. N. Cassidy, Secretary-Treasurer, Canadian Association of Chiefs of Police. In addition it is signed by Mr. Walter Boyle, who is a member of the Canadian Association of Chiefs of Police as the Chairman, Crime Prevent and Juvenile Delinquency Committee and Chief of Police of the Town of Mount Royal, Quebec.

The Chairman: Thank you very much, Mr. Spearing. Do members of the Committee wish these statistics and attachments to be made exhibits or appendices to today's proceedings?

Mr. Scott: They should be appendices. They are very important.

(11.35 a.m.)

The Chairman: It is agreed that they be made appendices. I understand, Mr. Spearing, that you are available for questioning

and that the other members of your committee are also available for questioning.

Mr. Spearing: That is right.

The Chairman: Do any of them wish to make a statement before we enter that phase of the meeting? Perhaps Chief Mackey or Mr. Cookson or Mr. Boyle?

Mr. James P. Mackey (Past President, Canadian Association of Chiefs of Police): Possibly much, Mr. Chairman, will be brought out in questioning. Possibly this is the best way to bring it out.

The Chairman: I have Mr. Tolmie down as the first questioner and then Mr. Otto and Mr. Scott.

Mr. Tolmie: Mr. Chairman, perhaps as sponsor of the Bill I should also make a very brief explanatory statement. In the first place I appreciate the fact that the Canadian Association of Chiefs of Police have attended at this meeting. I also can appreciate your concern; your main responsibility is the maintenance of law and order and your duty is to apprehend criminals.

I think it should be pointed out that many associations and bodies have concurred with the principle of erasing records. I might mention, for example, the magistrates association, the John Howard Society, the university student groups, church groups, parole officials, and the Ontario bar association. Now this does not, of course, mean that they are right and you are wrong, but I bring that out to indicate the general agreement in principle.

You have mentioned certain clauses in the Bill. I would like to make it very clear that I do not expect that the Bill as it is presented in detail should be accepted. The only thing that is on trial so far as I am concerned is the principle. You mentioned the question of erasing records with regard to infants. You mentioned the time limit. I think these are certainly things to be investigated and I do not for a moment believe that they should be accepted as now presented in the Bill.

The purpose of the Bill in my opinion is simply this: once a man has been convicted and has served a sentence, then he has paid his debt to society. The record makes him a second-class citizen. This is self-evident if you talk to people who have records. They cannot be bonded; they cannot join the armed services; in many cases they cannot obtain civil service jobs; they are denied job opportunities. Furthermore, I firmly believe

that the retention of a record perpetuate resentment against society by the one who has a record.

This idea is aimed chiefly at those who have incurred records in their youth, perhaps through frivolity or immaturity. I feel they should not be pursued to their dying day by the stigma of a record. Now, examples can be given; for instance, the situation in Nova Scotia where a municipal councillor was forced to resign because he had a record. A very recent example is the celebrated adoption controversy involving Arthur Timbrell. Evidently the fact that certain members of his family had a record played a very important part in the decision not to allow Mr. Timbrell to complete adoption proceedings.

I have received many letters urging me to pursue the Bill to see if it could not be enacted into legislation. I would like to make it clear, and perhaps this would erase some of your doubts, that it is not a case of destroying the records. This is a misapprehension. The record would be retained for certain purposes and I agree with your submission that in certain specified situations the record would be retained.

The Bill does not say this but in my opinion, after hearing other witnesses, this is something that should be very seriously considered. Of course, you have to consider the Bill as it is presented to you. As I say, I do not want to make a speech, but you have mentioned the fact that the existence of a criminal record does not hinder the rehabilitation of a criminal.

• (11.40 a.m.)

I should like to quote very briefly from an article by Aidan Gough from the *Washington University Law Quarterly* for April, 1966.

There has been surprisingly little recognition of the fact that our system of penal law is largely flawed in one of its most basic aspects: it fails to provide accessible or effective means of fully restoring the social status of the reformed offender. We sentence, we coerce, we incarcerate, we counsel, we grant probation and parole, and we treat—not infrequently with success—but we never forgive.

Mr. Aiken: On a point of order, does Mr. Tolmie, intend to proceed at any length?

The Chairman: He has indicated he is not going to make a speech and I think we should let him continue for a while.

Mr. Aiken: The Committee is here to hear witnesses.

Mr. Tolmie: I agree, I certainly do not want to usurp the time of the Committee. I make the point because I think it has a very important effect on the rehabilitation of the criminal.

Now, the only objection which I think would be very seriously considered by the committee is that the destruction of records would hinder the apprehension of criminals. Would it not be possible for the police to keep private records that could be used for the purposes you have mentioned, and, at the same time, allow a person with a record to apply to a central bureau in Ottawa where, after a period of time during which it had been determined that he had led a law-abiding life, he could be granted a certificate of rehabilitation? I do not see any inconsistency here. This is the one objection which has bothered me. I would like to have your views on that.

Mr. Arthur G. Cookson (Chairman of Law Amendments Committee Canadian Association of Chiefs of Police): Mr. Chairman, how would it be determined that he is leading a law-abiding life? How would Ottawa get this information? This is the kernel of the matter. In my opinion, if a man has no record for a period of ten years the presumption is that he has led a law-abiding life. I do not think we can presume otherwise. This is the gist of the whole matter.

Mr. Walter Boyle (Chairman, Crime Prevention and Juvenile Delinquency Committee Canadian Association of Chiefs of Police): If I may I can give you an instance where you could presume otherwise. Let us say that we have in Canada a criminal with one conviction who goes to the United States and commits a crime and is sentenced to ten years or twelve years. He comes back to Canada. According to the Bill he has not offended against the Criminal Code of Canada. Are you going to proceed solely on presumption that this man has lived an honest life?

Mr. Tolmie: As a general principle, I am sure there are always isolated cases. One can always choose situations which might impinge upon the principle of any bill. Generally speaking, however if a man has led a crime-free life so far as the records are concerned then the presumption, as I say, is that he is law-abiding.

Mr. Mackey: First of all, Mr. Tolmie, I would like you to understand that we do not want to take a negative attitude towards this Bill. We are just as concerned as anyone in this room about rehabilitating the individual.

Mr. Scott (Danforth): But that is not really your function, is it?

Mr. Mackey: That is correct.

Mr. Scott (Danforth): That is somebody else's job?

Mr. Mackey: That is correct. However, I would like to point out that this is really not solving the problem of rehabilitation at all. The man needs assistance the day or the week he comes out of jail, not ten years hence.

Mr. Scott (Danforth): Or the year before he leaves?

• (11.45 a.m.)

Mr. Mackey: It should begin before he leaves; but this really does not meet the problem of the ten-year period. There is a story this morning in the *Toronto Star* about a man who had a criminal record and who, to all intents and purposes, lived with his family for a period of ten years. He then broke up the family, went back into crime and was sentenced just yesterday. You say this is only one offence. I have a number of cases that I just took at random before I came here which might illustrate what happens. If you wish I am prepared to tell you something about them.

The Chairman: Let us have them on . . .

Mr. Tolmie: Mr. Chairman, I just have one final question. Perhaps this is in a personal vein, but I think it is material to the discussion. Suppose one has a son, or very close relative, who commits an offence before the age of 21 and is convicted and has a record. He then wants to apply to go into the armed services or the Public Service and is denied. Do you not feel that boys in this situation should have the benefit of this type of legislation?

Mr. Mackey: Yes; the one-time offender; not the man who has a history of crime. I think we have to be sympathetic towards a youngster who is convicted for stealing a car, even going so far as perhaps a second offence, but beyond that I think you have to proceed with a great deal of care.

Mr. Tolmie: Then you agree with the principle?

Mr. Mackey: With the principle, yes.

Mr. Tolmie: I am talking now about the single offence, or possibly a second one—or possibly three?

Mr. Mackey: No, I am not going beyond that. You can if you want to.

Mr. Otto: Mr. Chairman, I am going to be so law abiding that I am going to restrict myself to questions, according to the rules of this Committee, and . . .

An hon. Member: No comment.

Mr. Otto: I am entirely in agreement with your general approach in your brief, but before we proceed I wonder if we could clarify some things in it which seem to be in conflict with other statements.

At the bottom of page 4 you say that if young people under the age of 21 knew that their records would be expunged they would be more willing to take a chance. Are you suggesting that where youngsters are involved in "joy-riding" or in stealing a car they really premeditate this act and consider carefully its consequences upon their later life, or is it just a spontaneous thing?

Mr. Mackey: Some of them do think twice about it if they know they are going to have a record. This is what prevents a great number of them from having records.

Mr. Otto: I believe Mr. Spearing said that in his review, and then later on that most cases of minor crimes are the result of a sort of temporary impetuosity. How do you reconcile those two statements? Are you really convinced that a majority of the young people committing offences would, in fact, consider the consequences of having a criminal record?

Mr. Mackey: No, I do not; but certainly some of them do consider the fact that they are going to have a mark against them, and I think this stops them from getting in with the gang.

Mr. Boyle: You must remember that when a car is stolen there are usually not one but three or four juveniles involved. Now, the hesitation because he knows that he will have a criminal record, will be arrested, will certainly hold back some who would normally follow at that age. This is what I think we

are trying to say, that there are followers at that age.

Mr. Otto: He might know that he might be arrested, but does he really consider that he will have a record and that he will therefore not be bonded at some future time in the event that he wants a bond?

Mr. Boyle: I think most children know they are going to be arrested and sentenced. They know it is a criminal act. Do you agree?

Mr. Otto: But do they know the consequences of having a criminal record?

Mr. Boyle: It is difficult to say. Some will and some will not. There is no doubt about that. However, if they know it is going to be erased automatically at the age of 21 this would create a different situation altogether. The Bill, as we read it, says that it would be automatic. They would know that, no matter what they did, at 21 years of age it was going to be wiped out. That would have an influence on them.

Mr. Mackey: Mr. Otto, in some schools they have a book entitled *Law and Youth*, or *Law and the Youth*—I am not just sure of the title of it—published by McGrath, which deals with the problems that face a young man or woman should they become involved with the law. This book is getting into the schools now, so that some of these young people do know what are the consequences of having a record.

• (11.50 a.m.)

Mr. Otto: This may be so, but I am looking at it personally. In my years of practice I have never once had occasion to defend anyone who I believed was aware of the consequences. It was always a spontaneous thing.

You also say that the record is very valuable for further investigation of criminals, but according to page 34 of the charts, under "Percent of persons rearrested within 30 months"—which indicates that they have criminal tendencies—there appears: "83 per cent acquitted or dismissed". Consequently, you have no record of these persons?

Mr. Boyle: It is all here. . .

Mr. Otto: I beg your pardon?

Mr. Boyle: We have the charges.

Mr. Otto: Oh, I see; you have a record of the charges and also of the convictions, and this Bill deals only with convictions.

Is it also true to say that you have records on many people who have no criminal record of any kind?

Mr. Boyle: Offhand, I would say no. I am speaking only for my own department. I cannot speak for across Canada. But I would say "no" to your question.

Mr. Otto: You would say "no".

Mr. Boyle: I am thoroughly convinced of it. It must be remembered that the Identification of Criminals Act says "charged" not convicted".

Mr. Otto: Yes.

Mr. Boyle: You must be very clear—charged" or "convicted".

Mr. Otto: Are you saying, then, that in the case of, we will say, the Mafia syndicate, which is well publicized throughout the United States, most of the members of which have absolutely no criminal record—they make sure of that—you have no record of their activities or of their position in the criminal society?

Mr. Mackey: Very definitely we have some record of them. They are not in our CIB files; they are in special files.

Mr. Cookson: This would be in the nature of a history file.

Mr. Mackey: Intelligence files.

Mr. Otto: Therefore, you really have two records?

Mr. Mackey: That is right.

Mr. Otto: And you are not dependent on the conviction record that the Bill deals with?

Mr. Mackey: Not totally; but we are dependent on fingerprints and photographs, and very much so.

Mr. Otto: As I believe Mr. Tolmie stated the Bill deals with a percentage of people for whom I think we all have sympathy, those who had a criminal record and have lived as good citizens. They are the ones involved in these points that appear in your brief at page 5 (b), (c), (d) and (e). They are the people who may want a bonded job or may wish to emigrate, and so on. You have mentioned in your brief—and rightly, I think—that there exist not only criminal records but also records which have been kept in, or

are available from, newspaper files, and so on. Have you had any inquiries, in the City of Toronto specifically, from management consultant firms who may be compiling a record on potential employees? Do you have many calls for that kind of record?

Mr. Mackey: I would have to go back over the years. I can tell you that we have had inquiries and that they have dwindled to practically nothing because they do not get this information.

Mr. Otto: They do not?

Mr. Mackey: They do not get this information from the police department.

Mr. Otto: You are aware that there are firms, some calling themselves "management consultants" and others "management security," who are very sophisticated and produce for management complete files of a man's record from the time of his birth? I am trying to substantiate your argument here, that there are not only the police records but that there are business firms who specialize in obtaining and compiling records of individuals—not only from your records but from newspaper reports and so on. Are you aware of such firms in business in Toronto or Montreal?

Mr. Mackey: I am quite aware that some firms compile records for their own protection, but there is no information on records supplied by the police to these firms. Within their own organization, if a man goes bad, they will inform each other for their own protection.

• (11.55 a.m.)

Mr. Otto: Insurance companies have great files.

Mr. Mackey: I do not know what their files are, sir, but...

Mr. Otto: I have only one other question, and I wish I had brought the information on it with me. There was a team of doctors, brother and sister, in the United States who issued a report about three years ago to the effect that they could predict criminal tendencies in children as young as seven years old, and after 18 years of records they put out a report last year saying that they were 85 per cent correct. Have you considered that report? Do you know the report about which I am talking?

Mr. Mackey: I am not really familiar with it. I have heard some talk of it, but I am not

familiar with it. I have listened to many experts in these fields and I have yet to hear of anyone who can predict.

Mr. Otto: Reverting to the chart on page 34, "Percent of persons rearrested within 30 months" and also, specifically, to page 35, could you enlighten me on the meaning of this? Does that indicate that repeaters are more likely to become repeaters if they are first convicted under the age of 20?

Mr. Spearing: That would be it. It would indicate that.

Mr. D. N. Cassidy (Secretary-Treasurer Canadian Association of Chiefs of Police): May I speak?

The Chairman: Yes, Mr. Cassidy.

Mr. Cassidy: This is an FBI study of some 160,000 people whom they traced from 1963 when they were released and of what has happened to them since that time. In the category, "Persons released in 1963 and rearrested within 30 months" those under 20 accounted for 65 per cent. This is shown by age groups.

Mr. Otto: These are convictions?

Mr. Cassidy: They were originally convicted, and rearrested.

Mr. Otto: I see. This does not include the group on chart 34 who were acquitted or dismissed?

Mr. Cassidy: No; this is of the same group, "Per cent of persons rearrested within 30 months by type of release in 1963". In other words, of those who were released on fine or probation in 1963, 30 per cent came back. In the group, "Suspended sentence and/or probation", 47 per cent came back, and so on.

Mr. Otto: Where, on the chart on page 35, it says "under 20, 65 per cent" does "persons released" mean released after conviction, or released because of acquittal?

Mr. Cassidy: I would say that the FBI charts are based on arrests. However, I think that is made clear at the beginning of the brief.

Mr. Spearing: If I may just interject, it says at the top of page 34:

A study has been made of persons included in the Careers in Crime Program who were released from custody in 1963.

Does that answer your question, Mr. Otto?

Mr. Otto: Who were released from custody.

Mr. Spearing: They were released from custody.

Mr. Otto: That means arrest?

Mr. Spearing: They had been arrested.

Mr. Otto: So that chart 35 also includes those who were acquitted?

Mr. Spearing: I would not say so at all. Indeed, those who were acquitted—I hope am not confusing you—would not have been convicted.

Mr. Otto: Therefore, if a chart were compiled not only of those who were arrested and convicted but also those arrested and dismissed that figure of 65 per cent would be considerably higher, would it not?

Mr. Cookson: Oh, I would think so, yes. It is bound to be.

Mr. Otto: Thank you very much.

The Chairman: Mr. Scott.

Mr. Scott (Danforth): Thank you, Mr. Chairman. May I, first of all, register my usual objection about briefs coming in on the morning of the hearing. It is very difficult to assimilate all the information and question intelligently. I have looked through it.

Mr. Mackey: Could we explain that?

• (12.00 noon)

Mr. Scott: Yes, certainly, if you like. I do not really care. The criticism is not directed to the distinguished Chief of Police of Metropolitan Toronto with whom I have debated several times, but it has always been capital punishment. This is a refreshing change. It is really an internal problem and we know there are reasons for it.

Speaking for myself, may I say to the witnesses that I could not possibly support the Bill in its present form. I have six questions and I will make them as brief as possible. These are very, very frightening figures that you have produced this morning and no matter what we think we cannot close our eyes to them. This is a very dangerous picture you have painted. What is the problem in law enforcement? Is it merely that our population is growing? Is it that we are becoming more criminally inclined? Is it because you do not have adequate forces and equipment against everything else? What in God's name is causing this frightening spiral in criminal activities? Do you know or can you help us?

Mr. Spearing: May we just add one thing to that, Mr. Scott. The statistics indicate that the spiralling crime incidence is far greater than that of the population growth.

Mr. Scott (Danforth): We know that. We cannot read the figures. What is it all about, Mr. Mackey? What is going on?

Mr. Mackey: I really wish I had the complete answer. I do not think I can give you the complete answer but I think there are many answers to it. First of all, I think our increase in population is one factor. Secondly, that more crimes are being reported today. I think the police departments today are recording everything that is passed along to them or reported to them. I think this is a major consideration, particularly in the juvenile field. There was a day when the police officer on the beat or the father or mother gave the child concerned a pretty good strapping and that was the end of it. It never got to court.

These figures are showing up in the courts today because they are being taken into the courts. They are not necessarily being arrested but they are being taken into the courts. Generally speaking, I think the public are getting much more careless in their habits. These are only some of the reasons. I do not have the complete reason. In the early part of 1967 I became most alarmed when we had over a 20 per cent increase in crime. We concentrated our people in certain areas and we were able to reduce this. There is a need for more law enforcement officers across the whole country.

Mr. Scott (Danforth): Perhaps I can talk to you afterwards because this is not really part of the Bill. However, contrary to what a lot of the police officers think, we are not a bunch of bleeding hearts up here. We are as worried as you people.

Mr. Mackey: Contrary to what you think, we do not think you are a lot of bleeding hearts.

An hon. Member: You certainly give us that impression!

Mr. Scott (Danforth): The problem is that we have to try to equate the need for good law enforcement with the cases of those individuals. There are not that many but there are cases where they have lived a good life and these records should not be held against them. I do not say that there are hundreds of thousands of them but we have

all run into them. This Bill, while I do not agree with the terms of it, is an attempt to come to grips with that.

I am impressed with the compromise in your brief and I want to ask you about it. You are not really objecting to this in genuine cases. All you want is some sort of a judicial hearing so that individual cases can be looked into. Of course, there already is provision, as the Chairman knows, under the Parole Board regulations for an individual to make application for expungement of his record. Frankly, I am more inclined to trust the parole appeal board than some of our judges. How do you envisage this will work? Could you elaborate on it? Who would be represented, what would it go into, who would hear such an application and what would be available at it?

• (12.05 p.m.)

Mr. Mackey: If you are asking me that question—

Mr. Scott (Danforth): I will direct it to whoever wants to answer it. Whoever put it in the brief must know.

Mr. Mackey: I do not think we are prepared to make this recommendation. I think there are some differences of opinion within our own group on who should hear these cases; whether it should be a judicial body or the National Parole Board.

Mr. Scott (Danforth): But is the Association prepared to accept a proposal of this kind?

Mr. Mackey: If an application is made and there is an investigation when this man applies for a pardon, I think we would go along with it. This is particularly true in the case of the single offender or, in exceptional cases, the offender who has committed offences twice in his lifetime. However, when you have the situation where a man has quite a background of crime I think we have to be most careful. I have statistics here which I have taken at random—

Mr. Scott (Danforth): You misunderstand my question. I do not want to argue the merits of such an application. You can oppose them all if you like, nobody really cares, but all I am asking is if the police Association would be prepared to accept the principle—never mind whether it is one offence, two offences or three offences, that is your argument at the hearing—of some body being set up, perhaps not judicial,

where people who have a record and who have lived, as we express it, a good life, a clean life since then could apply to have their records expunged. You can be represented and anybody else can be represented and you can make any argument you want, but would the Association accept the principle of some body being set up to mediate and adjudicate on applications of this kind?

Mr. Spearing: May I answer that?

Mr. Scott (Danforth): Yes.

Mr. Spearing: We have indicated in our brief words to that effect. We do not feel that we are competent to set up or suggest what type of committee this should be. We have described it as a judicial committee. This is as far as we thought we should go. We are sympathetic toward the first offender and the sole offender. As we have indicated, we feel that Mr. Tolmie's Bill is much too wide and, from what Mr. Tolmie has said, he also feels it is too wide. If it gets down to the principle of protecting or assisting the one individual, the single offender of tender years, if you want to call it that, then we are for it. However it is done by way of this application being made and a judicial committee, or what have you, being set up, we are in agreement.

Mr. Scott (Danforth): One other question. One thing that worries some of us who have been doing some criminal law is the fear that—and I know of such cases which I am not going to quote—records will be used in some instances almost for harassment.

Mr. Mackey: I think something should be said about this matter of harassment. This is one of the stigmas and I believe harassment has been mentioned in some of the discussions that have been held.

An hon. Member: It is mentioned in the Bill.

Mr. Mackey: As far as the police are concerned there simply is not harassment. You may think that we go out and follow people day in and day out.

Mr. Scott (Danforth): No, that is not what I mean. If I have used the wrong term I would like to withdraw it. I am speaking of cases—and I have dealt with such matters—where a crime is committed in the community and all the records are pulled and away they go after everybody. They even interview them at their work. These are peo-

ple who, as subsequent events turned out could have no connection with the offence whatsoever. What is your comment on the use of records in that way?

Mr. Mackey: I do not follow you, sir, unless you are talking about a pardon and they are starting to investigate this pardon. Is that what you are talking about? I do not follow you. Do you mean if somebody is going to work and using their records for purposes of harassment?

Mr. Boyle: You mean that a crime is committed and everyone rushes out and take someone—

Mr. Scott (Danforth): Not everybody.

Mr. Boyle: No, but you know what I mean. I think technically what you mean is that the police go through the *modus operandi* file and say, "This is his style" and go and interview—

Mr. Scott (Danforth): I have had cases where it has happened.

Mr. Boyle: This is not done to my knowledge.

Mr. Scott (Danforth): Then you are more virtuous than your employees. I know such cases.

Mr. Boyle: I do not believe so.

Mr. Scott (Danforth): Perhaps you do not condone it. This is another worry about records and I am not sure how we go around it because I can—

Mr. Mackey: If a man is an active criminal he can expect someone to be on his tail if a offence has occurred. If it is the type of man you are talking about who is living in society he will probably never see or hear of the police again.

Mr. Scott (Danforth): I wish I were as sure of that as you are. That is all for the moment, Mr. Chairman. I would like to give somebody else a crack at it.

Mr. MacEwan: I just want to ask the gentlemen if they have read the submission by the magistrates' association and the presentation by the Chairman of the National Parole Board?

• (12.10 p.m.)

Mr. Spearing: The answer to that question is that we have.

Mr. MacEwan: I take it you do not agree with the suggestions they made. I think in one case the Chairman of the Parole Board suggested that some type of board be set up to look into the matter of a person's record. The magistrates thought that perhaps there should be some official in the Solicitor General's department to whom an application could be made to expunge records, and following that there would be no investigation in the community or through any officials at all. Do you not agree with that?

Mr. Mackey: I think there has to be some investigation, sir, because a number of these people live in very fine homes and drive Cadillac cars and yet they are operating legitimate businesses. They have people working for them and we know this, and I do not think you can say that this type of person is automatically a good risk.

Mr. MacEwan: No, but what would be the percentage of the type you are speaking about as compared to ordinary people who have one or possibly two convictions against them? By this investigation are you not invoking a penalty? As I understand rehabilitation a lot depends on keeping the matter secret in an area for the person and I think that is an important factor in it.

Mr. Mackey: I think so, too.

Mr. MacEwan: Would you not be penalizing other people?

Mr. Mackey: I think it has to be kept secret. I think this is one of the important parts of it and one of the reasons you cannot do it automatically is because a man may have been single when he committed an offence and he then marries, has a family and is doing well, and then all of a sudden in his mail box there is a letter indicating that his record has just been expunged and he is now free. His wife reads this letter and says, "Well, that is fine, that is wonderful. I just heard about this." I think this is the type of thing you have to be careful about and we are just as aware of this situation as you are. I think it has to be kept secret but you still have to have a hearing.

Mr. Tolmie: On a point of clarification, Mr. Chairman. The suggestion would be made at the one who wants to have his record expunged would make application.

Mr. Mackey: That is right.

Mr. Tolmie: And then it would be his decision, it would not be an automatic thing pumped out from the central bureau. He would have to apply and if he complies with the conditions, the period of time, then automatically and without investigation he would be issued with a certificate of rehabilitation.

Mr. Mackey: But you would still have to enquire, particularly from your law enforcement agencies, what this man is presently doing.

Mr. Scott (Danforth): May I ask a supplementary on that point. The real difficulty you have raised is how do you prove rehabilitation? What facts do you use? I remember the hearings we had in Ontario before Mr. Justice Roach. We knew these characters on the witness stand were crooks. We knew it but we could not put our finger on anything that would stand up at any sort of a hearing. I think this is part of your problem.

Mr. Mackey: It is difficult.

Mr. Scott (Danforth): In your judgment, how do you prove rehabilitation? What would be the criterion?

Mr. Mackey: I think if there is any suggestion of doubt in the matter that he should not be allowed to have pardon. If he is going to be pardoned he would have to explain beyond any shadow of a doubt.

Mr. Scott (Danforth): That is a big onus to put on a little individual.

Mr. Mackey: It may be a big onus but it is being put on to society as well. You better than anyone here know the type of people you were dealing with at the time of the Roach Commission.

Mr. Scott (Danforth): I know.

Mr. MacEwan: Why is it that you are so opposite to the submissions of bodies such as the Parole Board and magistrates, with whom you deal every day, in the matter of the expunging of records? Do you not think they are qualified? That is really their field, is it not?

Mr. Mackey: I think they are most qualified. I have a great deal of admiration for Mr. Street and there are many things in his brief with which I agree. However, I notice in one area I think he said there were 18,000 people that had been paroled and only

a very small percentage—I think it was around 10 or 12 per cent—got into trouble during the parole period.

Mr. MacEwan: During the parole period?

Mr. Mackey: Yes, but he did not go on beyond that. This is no reflection on Mr. Street because he is a man of great character.

Mr. MacEwan: I noticed at the conclusion of this booklet we have here it reads:

in the past eight years the board has granted parole to 15,364 inmates. This figure includes 608 minimum paroles...

And so on and so forth. It ends with these words:

that during the last eight years 90 per cent have been successful in completing their parole period satisfactorily.

Mr. Mackey: Completing their parole period?

Mr. MacEwan: Yes. In other words, if they have done that successfully, then I feel they are people whose records should be cleared. That is all have.

Mr. Mackey: I must say you are certainly giving them the benefit of the doubt there.

Mr. Boyle: You have to extend beyond the parole period because you must remember that he will have to go back in if he breaks his parole.

Mr. MacEwan: Yes. Just for the sake of argument, if you changed your minds—which I do not expect you to—what period of time would you put in this or a similar bill to expunge records?

Mr. Boyle: Ten years.

Mr. Cookson: That is for everyone; there would be no distinction between infants and adults?

Mr. Boyle: Yes.

Mr. Scott (Danforth): You say ten years from...

Mr. Cookson: Ten years from the end of sentence.

Mr. Scott (Danforth): Across the board?

Mr. Cookson: Yes.

Mr. Scott (Danforth): For the expunging of records?

Mr. Boyle: Upon application and a hearing.

Mr. Scott (Danforth): For a moment I thought you had changed your minds.

Mr. Cookson: No.

Mr. Scott (Danforth): I am just joking.

Mr. Cookson: Mr. Chairman, if I may speak just for a moment. I think this is quite important. You have already been told that we do not disagree in principle with this Bill but it certainly needs a lot of changes. The principle change would be in distinguishing between the known criminal and the solo offender who has committed a foolish act. We are very much in sympathy with this person. We are in full agreement that in this case the record should be expunged after a period of time. However, when you are dealing with known criminal, unless after a period of time—and I have already specified ten years—there were a very thorough investigation and absolute, indisputable proof that this man had recovered his normal state in society, that his character is now irreproachable then I think it would be disastrous under any other circumstances—

Mr. Scott (Danforth): What you are really asking us to accept—or is this the case? You can explain it—is that you want us to erect a presumption of guilt against these people.

Mr. Cookson: And unless they—

Mr. Scott (Danforth): One of the witnesses turns away. I do not want to misinterpret you but from what you say I get the impression that while we are grappling with this, as we do not know how the Bill will be amended you want us to erect a pretty strong barrier.

Mr. Cookson: Yes.

Mr. Scott (Danforth): A pretty strong barrier. Let us be frank with one another.

Mr. Cookson: Yes, this is what we mean.

An hon. Member: As a precaution.

Mr. Scott (Danforth): A pretty strong barrier against the expunging of records.

Mr. Cookson: Except for the sole offender who has made a foolish mistake. This could be taking an automobile without consent or could be a minor theft—we are in agreement with this—and he has perhaps served his sentence and has redeemed himself in the community and after a period of time—a

re give it ten years—and there is nothing against this person, I see no reason whatsoever why his record should not be expunged.

Mr. Wahn: Mr. Chairman, on a point of order. We seem to be getting into an argument and there are a number of members of the Committee who have not as yet had an opportunity to ask questions.

The Chairman: Mr. Guay.

(translation)

Mr. Guay: I have only one or two questions to ask you. First, I would like to complete what is said on page 6 of your report about the percentage of people who have been incarcerated during the 1966 fiscal year. It is stated that 81.9 per cent of these people had already appeared in court or had already been detained.

So, I would like to ask you the following question: have you previously made an investigation about these people to find out since their first conviction, these recidivists had been able to work and how much time they had been able to work from the moment of their first arrest to the moment of their relapse into crime?

Mr. Boyle: No, sir, we have no statistics on that. We have no information on this subject.

Mr. Guay: Do you not think an investigation should be made precisely to find out the cause of the relapse into crime by these people? Maybe, unable to find work at a given time, they had no other choice: relapse into the same sin, into the same crime they had previously committed, either theft or some other offence.

This, I think, would be a very important thing for police chiefs to know, and also for us. And, as to the merits of Mr. Tolmie's Bill, this investigation, I believe, would bring an answer which would help us, if we knew it.

Mr. Boyle: We all agree, I am sure. But we do not have the authority, as police chiefs or a municipality, to make this kind of investigation. An investigation would have to be made at the federal level.

Mr. Guay: Would it not be a good thing if the police chiefs recommended such a measure, a very thorough investigation on every case of the repeaters in order to know the causes of the relapse into crime?

Mr. Boyle: There is no doubt that this would be interesting to know.

Mr. Guay: Another question also interests us: among these repeaters, are there any criminals who have been declared habitual criminals? Do chiefs of police request before the courts, under section 660, that certain criminals be declared habitual criminals so that they can be detained on suspicion?

Mr. Boyle: Yes, this happens. You mean after the fourth offence, and as demanded by the Criminal Code?

Mr. Guay: By the Criminal Code.

Mr. Boyle: Quite rarely, but in a simple way today, because we even have asked for amendments. I do not know the word in French, but it is "persistence" in English, and it is difficult to define in the legal context.

Mr. Guay: I remember presenting a bill in the House of Commons to have the Code amended. On the second line of section 660: "La Cour peut...", I proposed to replace "peut" by "doit", thus making it automatic.

Mr. Boyle: If we had that, it would be wonderful. This would be wonderful for us, for society in general, not only for the police. I do not speak for the police at the moment, but from the point of view of justice in general.

Mr. Guay: Another question. According to the suggestions and to the conclusions you draw in your report, after how many years would the files become unavailable to employers? And to complete my first question, will a repeater have to wait, here again, 10 or 12 years before finding a job? As his file is still public, he has no means of rehabilitating himself, of finding employment, of working for any public body or even for a private concern. He cannot do it. As soon as he is investigated, it is discovered at once that he has had a record for six, seven, eight, nine or ten years. He is then fired and finally he becomes discouraged. He has no chance to rehabilitate himself.

Mr. Boyle: I want to call your attention to one fact: actually, it is forbidden to supply this kind of information to an employer. We are not responsible for this. The records of criminals do not go out of the department. We do not supply this information.

Mr. Guay: Who then?

Mr. Boyle: Frankly, we do not know. Here. It is easy enough to understand, I believe. You buy something at Eaton's and you ask

for credit. Eaton's makes an investigation and asks for the names of your former employers. There will certainly be a period of five years or two years during which you did not work. At that moment, questions will be asked.

Mr. Guay: Even if the records were made to disappear, this period would still remain.

Mr. Boyle: This is evident.

Mr. Guay: It will be known that he has not worked during four or five years.

Mr. Boyle: It is a fact and you cannot prevent it either. In the case of someone who wants to borrow money or buy, naturally the company will make an investigation to find out if the fellow is a good risk, as is commonly said.

Mr. Guay: About the request, would the chiefs of police be of the opinion that this request be made before the court which convicted the criminal for his last offence, and that the investigation be made and conducted by a special commission, to bring the proof before this same court?

Mr. Boyle: It is hard to say. It is not up to us to decide, but we believe that requests for information, judges' reports and convicted persons' records should be centralized.

Mr. Guay: A near-judiciary body would be needed, rather than a court?

Mr. Boyle: Yes, Sir.

Mr. Guay: Thank you.

Mr. Choquette: Does the recommendation you are making apply not only to minors, but to all persons?

Mr. Boyle: Yes.

(English)

Mr. Mackey: Mr. Guay, you mentioned the person who has been unable to find employment. I think this is one of the reasons we get a lot of repeaters. It is most difficult for men coming out of prison to get a job. This is one of the recommendations we put forward. We do not know the means you could use to bring this about but we think this is a problem. As long as I have been a policeman there has been the problem of the offender coming out with a few dollars in his pocket and either having to turn to some of his former associates or to start "B & Es" again or theft again.

Mr. Boyle: I would like to mention that Mr. Mackey made a very good suggestion in our discussion of this matter before we came here. Although he has not elaborated on it he suggested that some type of government bonding company bond these fellows.

An hon. Member: What is that?

Mr. Boyle: He suggested that some type of government bonding company bond these men as they come out and then the employee would not be apprehensive about engaging a man who has just left prison because he would be guaranteed, up to a certain amount that should this man steal from his company he would be recompensed. You now have something very substantial, I think. I do not know why Mr. Mackey did not mention it because it was his thought on the matter and I think he should continue along those lines and perhaps persuade you a little better than I can.

Mr. Gaffney: That is only a part of the problem.

Mr. Mackey: That is only part of the problem, really.

Mr. Boyle: I think it might open fields of employment for the men.

(Translation)

Mr. Guay: Sir, as powerful as a government body can be, would it not be possible for it to be a guarantor? Many heads of families would be willing to do everything and to answer to the employer for their 22 or 23-year-old sons, to guarantee their rehabilitation, in fact, by their good will, their good faith. We could perhaps even answer for our friends, for their good faith, and prove that they are rehabilitated.

Could not the employer be forced to keep an employee? Often, the employer will learn that an employee has a record six or seven months after this employee has given good service. When the employer discovers his employee's past, if the latter has a guarantor who can say: I guarantee the good faith and the rehabilitation of this fellow, could we not force the employer to keep the employee in his employ?

(English)

The Chairman: I think Mr. Spearing wants to make a comment too about it.

• (12.30 p.m.)

Mr. Spearing: I would like to comment on the reference made to Chief Mackey's failure

to bring up the subject. As the Chairman I resume I should perhaps have brought up the subject of the United States where there is a bonding company operating bonding those released from incarceration. Perhaps we should have suggested the Canadian government might like to consider such an organization issuing fidelity bonds especially for the protection of those who might eventually become involved, or more particularly those people who might become victimized because of the individual they have taken into their employ.

Mr. Scott (Danforth): That is only dealing in terms of money.

Mr. Spearing: That is right. Now may I just go on with the question of bonding because it has been raised two or three times and also the difficulty these liberated persons have in finding employment.

I am speaking now of one of the largest employers of people in Canada, that is the Canadian National Railways.

Mr. Scott (Danforth): Do you employ ex-convicts?

Mr. Spearing: I was coming to that. We have a policy that does not close the door to those with a criminal record. I have here, just as a guide for myself, many, many cases where we have in our employ people who came into the company and gave the answer that they had not been convicted of a criminal offence. Subsequently we found out they had but they were retained in the service. We have many in the service of the company who answered that they had been convicted of a criminal offence and we have taken them into employment.

We experience no difficulty whatsoever with the bonding companies in securing bonds unless we are dealing with an outright fiscal. We simply say that the individual seeking employment appears to us to be rehabilitated and satisfactory for bonding. We ask for their reply and in most cases it is in the affirmative.

Mr. Scott (Danforth): What is the question you ask? Do you ask employees to state—

Mr. Spearing: "Have you ever been convicted of a criminal offence?"

The Chairman: Are you finished, Mr. Gay? Next is Mr. Choquette, then Mr. Mahn and Mr. Graffey.

(Translation)

Mr. Choquette: There is something that worries me greatly: if we established a procedure, a request, for example, concerning an application for destruction of legal records, I would doubt its efficiency, as we would face the following situation: the request itself, by which application is made for the destruction of the records would be part of the court records. The request would be filed in some record. It would be kept in the records and, if there are indiscretions now about present records, the same indiscretion could be committed about a request to remove the record of a criminal. I wonder how you can reject such an objection.

Mr. Boyle: We have included a provision in case the police would need the record. It would be only through a request, approved by a judge or a magistrate, that the records could be examined. This is what we have provided for. Here again, it is a question of administration.

Mr. Choquette: This means then that you would reserve for yourself the prerogative and the right to search through the records containing the registration of the request concerning the application for removal of a criminal's record?

Mr. Boyle: But only if valid reasons can be given and with permission of a judge or magistrate.

Mr. Choquette: Then, in practice, what would be the use of destroying the record as such, for a guide mark or a reference would remain all the same. A request would indicate that a record had already existed.

Mr. Boyle: We are not the only ones who recommended such a measure. The Justice Commission also recommended it.

Mr. Choquette: I am trying to tell you that I do not see the use of destroying records if there is another guide mark by which the existence of a record can be traced again.

(English)

Mr. Mackey: May I say one thing here?

The Chairman: Yes, sir.

Mr. Mackey: I will mention this just to illustrate the trouble you run into when files are destroyed.

Mr. Choquette: I am quite in favour of what you have put forward.

Mr. Mackey: I would just like to say this. I tried to dig out the files on the famous Red Ryan case and I found they had been expunged from our records. However, I did go to the file we had from the newspapers and it was most complete. I did not really need our records. It was a whole bookful. Really, there is no possibility of erasing records.

Mr. Scott (Danforth): Red Ryan is not the type we are talking about here.

Mr. Mackey: Red Ryan was supported by even the Chief of Police in those days; nevertheless he wound up, as you know, being shot to death. He was a prime subject for the Parole Board. But you just cannot erase all records. Regardless of what you determine by legislation there will be records.

(Translation)

Mr. Choquette: I am in perfect agreement with you. I now would like to ask another question about the statistics supplied to us, that is, *acquitted or dismissed, mandatory released*, and so on. Does it happen frequently, when you are dealing with good citizens—I am not trying here to ask that certain classes be discriminated against; for example, if someone belongs to a good family—that you give him preferential treatment? We are definitely against such treatment. However, when you are dealing with a good citizen, whether he is poor or out of the middle-class, you must certainly know that the offence he is charged with could be of a nature to wreck his career. You also know that the offence he has committed is probably the result of a frivolous whim which will probably not be repeated. Does it happen that, in police departments, in very exceptional cases, you omit the charge and give the accused a chance, as we say in English? Does this happen or do you prefer not to be indiscreet?

Mr. Boyle: It can be said that this can happen.

Mr. Choquette: This can happen. This is very important.

Mr. Boyle: It depends, however, on the kind of crime.

Mr. Choquette: It depends on the person you are dealing with.

Mr. Boyle: This depends on circumstances, but it can happen.

Mr. Choquette: I am happy to know these things. I would like to ask you a last ques-

tion, but I believe you have already answered it. You stated a while ago that you had no statistics of any kind in your possession which could reveal approximately the difficulties encountered by those who are released, with regard to obtaining employment. I am sure you must have some information on the subject?

Mr. Boyle: Frankly, it is not up to the police to know such things. This is not part of our duties.

Mr. Choquette: This would rather come under the Dominion Bureau of Statistics; would it not?

Mr. Boyle: The Parole Board, which deals with paroles, is the better place to get this information.

Mr. Choquette: I conclude by congratulating you for preparing such an interesting brief and I am ready to subscribe to your suggestion and, addressing this to all the chiefs of police, I can assure you that I am happy to read your brief in English. However, if you are called again to testify before this Committee and if you have the opportunity of presenting a brief prepared in French, we would be very pleased.

Mr. Boyle: Well, we had only one day to prepare it. We wanted to mention this fact a while ago. We arrived in Ottawa yesterday and we then prepared it. This is the reason why you did not receive it before.

Mr. Choquette: The reason I say this is because it is in your interest. If you want to avoid a renewed outbreak of violence, respect the bilingual character of this country.

Mr. Boyle: We are completely in agreement on this point.

(English)

The Chairman: Mr. Wahn is next and then Mr. Grafftey.

Mr. Mackey: In answer to some of Mr. Choquette's suggestions, possibly you think that everyone who is investigated is charged. This is not so. There are thousands of cases of shoplifting in the major stores where charges are not preferred.

• (12.40 p.m.)

Also, with regard to expunging records—this has not been mentioned and I think it is important that it should be—

would have to have some reciprocal agreement with foreign countries. If we got to a point where we had a reciprocal agreement with the United States, I am afraid that we would have a number of the Mafia moving in here, at least for a period of time, and using this country as a haven. We would not know them as they know them, and it would be very difficult for us if we had such a reciprocal agreement. I think Canada would be the worse off.

Mr. Tolmie: This is a very basic point and do not want you to go away with the idea that the records are going to be destroyed. Now this Bill indicates it but, as I have said before, after hearing evidence, I do not think that is feasible. The records should be maintained for certain specific purposes, and accessibility to foreign countries would be one of them.

Mr. Mackey: I am sorry I am belabouring the point, Mr. Tolmie, but because I think it is important I am bringing it to your attention.

Mr. Tolmie: Yes, I see your point, because it is in the Bill.

Mr. Wahn: Mr. Chairman, I would like to congratulate the witnesses on their brief and their presentation of it to the Committee. I think it is most helpful. It indicates how careful we must be in considering what action should be taken on this Bill.

I would like to put this question to the witnesses. We all believe, as a result of evidence heard, that this Bill does need certain changes. Now let us suppose that the Bill is changed so that the criminal record is not destroyed but simply after the ten-year period or whatever period might be agreed upon is removed and placed in an inactive file, and in the event of a second conviction it is restored to the current records. Let us assume further that in order to remove the record to the inactive file it is necessary to make an application, but that no attempt is made to have a judicial or any other investigation.

If an application is made for the removal of the record to the inactive file, and if the prescribed conditions are met, namely a ten-year period or whatever it may be has elapsed, then automatically the record is removed to the inactive file subject, as I have said, to being reactivated in the event of a subsequent conviction. Would any such system seriously interfere with the investigation

of crime and the conviction of criminals, or would this be satisfactory from your point of view?

Mr. Cookson: I think we would have very much the same situation as we now have. Many files remain inactive until the individual named in the file reactivates it himself by committing another crime.

Mr. Wahn: Then you would see no objection to a system such as I have described?

Mr. Cookson: No.

Mr. Wahn: That is all, Mr. Chairman.

Mr. Mackey: Mr. Wahn, if you have time, I would like to quote some of these cases to you. I will omit names.

In 1932, theft of auto; 1932 theft of auto; 1933 theft; 1933 theft; 1933 loitering; 1937 theft; 1938 theft, and then we do not see or hear of him again until 1967, some 29 years later, when there were two charges of indecent assault on a male. In 1954 indecent assault on a female, suspended sentence; 1964 indecent assault, five years. In 1939, indecent assault; in 1947 (eight years later) indecent assault; 1948 incest; 1955 (seven years later) attempted indecency and 11 years later, in 1966, indecent assault—a breach of the Juvenile Delinquents Act. In 1934, breaking and entering; 1938 take auto; 1943 indecent assault; 1949 indecent assault, and then 17 years later fraud, three years at that time. In 1937, theft of auto; 1955 (18 years later) indecent exposure—perhaps not too serious; 1964 (9 years later again) indecent assault on a female. In 1943, indecent assault; 1947 indecent assault; 1962 (15 years later) indecent assault again; 1965 indecent assault. In 1937, contributing; 1941 indecent assault; 1942 buggery—and this was in England; 1947, two years before he was supposed to get out of prison, he is in Canada and charged with contributing to juvenile delinquency; 1953 (six years later) buggery again; 1957 (four years later) buggery and then a seven year period of buggery again. In 1923, contributing; 1940 receiving; 1944 gross indecency; 1953 (nine years later) buggery; 1957 indecent assault; 1961 gross indecency, and in 1963 vagrancy. Here is another gross indecency in 1958 and then again in 1967. There are great periods of time between many of these. Here is one of contributing in 1949 and gross indecency 15 years later. They do not necessarily follow a pattern of indecent assault. It

can be a combination of offences. These are mostly indecent cases that I have read to you but I have numerous others here.

The Chairman: Mr. Grafftey, do you have a supplementary question?

Mr. Grafftey: I have a quick interjection. It would seem from what has been said that the whole generic term of sex offences is hard to discuss under this legislation.

The Chairman: Mr. Tolmie, do you have a supplementary?

Mr. Tolmie: This is the point I was going to make, Mr. Chairman. There is this question of sexual offences, and they seem to follow a pattern. Possibly when a person makes an application and the offence is a sexual one, in this particular category investigation might be warranted, because the ones you have mentioned are primarily sexual.

Mr. Mackey: I will give some others, sir, that I have brought along, if you are interested in listening to them. Perhaps it will take too much of your time.

The following are general offences. I know some of these individuals personally and know the type of lives they lead. 1935 housebreaking, 1937 theft; 1938 assault and robbery; 1940 robbery while armed; 1948 (that is 8 years later but, mind you, he got a six-year sentence, so he would likely have four years clear); 1950 keeping a gambling house; 1960 (10 years later) conspiring to defraud, for which he got a year, and seven years later again he got just a year and six months for a \$10,000 conspiracy. His partner in crime; 1940 theft; 1941 theft; 1941 theft; 1943 theft; 1944 theft; 1947 attempted grand larceny; 1958 (11 years later) six months, and on June 21, 1967, again charged.

Here is one starting in 1919 and it goes all the way down almost yearly to 1927: 1929, 1930, 1930, 1932, 1935, and then we have a period from 1947 to 1954 in which one might think perhaps that the fellow has eventually found himself, but in 1954 he arrives in Mr. Cookson's city and he is arrested again.

Mr. Scott (Danforth): Let us take that particular case. Why do you say that all those previous convictions should be held against him if he went such a long period of time without getting into trouble?

Mr. Mackey: I am just showing you what happens. They do not necessarily come to our attention, Mr. Scott. What happens is that

they get out of circulation and get into some other area. Also, there may be records in the United States or he may have gone to England or somewhere else. I am not saying that he has committed offences during that time but he just has not come to our attention.

Mr. Boyle: I think you must understand that in the major fields of crime such as breaking and entering and armed robbery, there is only about 20 to 25 per cent of the cases cleared by the police.

Mr. Scott (Danforth): What do you mean?

Mr. Boyle: By arrests.

Mr. Scott (Danforth): Oh, I see.

• (12.50 p.m.)

Mr. Boyle: It means that about 75 per cent of these crimes are unsolved from a technical point of view. We may know who perpetrated the crime but we have no evidence to bring before a court and secure a conviction.

(Translation)

Mr. Guay: Mr. Mackey, you speak often about agreements concerning criminals who go abroad to commit infractions. Such agreements have been signed with the United States, with England and with other countries. However, I cannot avoid thinking about the immigration system. I wonder if our immigration system is efficient. Can we rely on the investigations made by the officers of the Department of Immigration? Have you any doubts about the immigration system in force in Canada and in the United States? If we cannot trace again or if we can very easily let a member of the Mafia enter, leave the country, does this depend on our immigration system? Do we have a good immigration system, if a criminal can move so easily from one country to the other?

(English)

Mr. Mackey: It is very easy to move from one country to another to commit crimes today. If you want to go to the States there is nothing to stop you from crossing the border, getting in an aircraft and going down there. You might commit crimes there and eventually be caught. They may put you back in Canada but you may, on the other hand, serve a sentence there. The reason for this cannot explain but sometimes they will keep them there to serve the sentence and other times they will deport them.

The Chairman: Mr. Grafftey, you have some questions.

Mr. Grafftey: I will try to be very brief. Mr. Chairman, through you, may I ask the committee this as I move into my questioning of Mr. Mackey. I believe that in our dialogue we have reached the stage where we are discussing a balance between the desirable and legitimate aspect of law enforcement and investigation, and the desirability of erasing certain records under certain conditions. I think that is what we are discussing, is it?

The Chairman: You have been here all morning.

Mr. Grafftey: We have been here since 11 o'clock but I do not think we can arrive at that conclusion.

The Chairman: We are not trying to reach a conclusion.

Mr. Grafftey: We certainly were not reaching any conclusion at the beginning of our discussion.

Mr. Mackey: let us envisage this legislation twenty years from now when Mr. Tolmie's legislation is in force and certain records are going to be burned, or whatever you are going to do with the records when you expunge them. Am I not right in saying that within a very short time you are going to get enough information from those records immediately and photograph, fingerprint, or anything else to make your investigative procedures possible? In other words, if you realize that tomorrow morning at nine o'clock a record is going to be expunged, surely you are going to get for your investigative procedures of the future all the information you will need.

Mr. Mackey: You are suggesting that we are not going to comply with the order of the court?

Mr. Grafftey: No, I am not. I certainly do not think I am.

Mr. Mackey: I am not being facetious in that but it is a good point because I think that could be done and I think you would like to watch this.

Mr. Grafftey: That is useful information. I do not believe Mr. Tolmie would object to this.

I am going to try and get to this brief but my notes expunging a record or taking an eraser and erasing the record does not mean play—and let us be realistic—that you are going to have the kind of details and

facts from that record to make your job more possible. I do not think, Mr. Tolmie, your proposed legislation envisages that.

Mr. Mackey: I am pleased to hear that because I believed when I read this legislation that this was generally the case and I was trying to decide in my own mind whether it meant one offence or many offences in the Bill. This is why we have attacked it in this manner.

Mr. Grafftey: This is how I probably sounded when I gave the theme of my questioning. I oversimplified it at the beginning.

I will go on from there . . .

Mr. Cookson: Could I add something, if you do not mind, please? When you are dealing with records you are dealing with a very complex variety of documents. Let us say a man is arrested for a criminal offence and is booked. His name and the offence, and so on, is in the jail record. Then his name appears on the docket along with possibly thirty other names on one docket sheet. There is an information and complaint and there is a warrant. There is a record of conviction and this is in the hands of the local magistrate or the district court judge. It eventually gets to the court house, the judicial district centre, and there it is filed, perhaps along with certain exhibits. These exhibits, after a certain period of years—I do not know just what it is—are destroyed but the file is never destroyed. Then there is the fingerprint record and a photograph in the local department identification bureau. Then there is the central bureau in Ottawa which is controlled by the RCMP and there you have a record. So, when you are dealing with the expungement of records all of these various matters have to be considered and, as I say, it is very complex and just how it is to be done, I do not know.

Mr. Grafftey: Let us get on to a subsequent question which is interrelated here. Supposing in one way or another we made it a prohibition for prospective employers to ask the question: "Have you had a record?" verbally or in written form. Would this prevent the said employer from making the kind of investigation into . . .

Mr. Cookson: I do not think you could legislate against it.

Mr. Grafftey: No. Even if you said he cannot ask the question verbally and cannot put it in written form the employer is just

going to make the kind of investigation that he is making today anyway without asking anybody.

Mr. Mackey: But in the Province of Ontario—I am not too sure of the law on this—you cannot ask a person his religion and this type of thing. I think this is in the same area but it does not answer the problems. You are talking about the man being a second-class citizen. At least he does not have to write on there: "I have a record," and I think this is what embarrasses him when he goes to get a job and certainly it is an obstacle in some forms of employment; there is no doubt about that.

Mr. Gaffney: This next question is more or less a question and an assertion. I feel your brief has been excellent. The kind of commission you are talking about is realistic but in view of the fact that we are just scraping the surface in the area of penology and criminology concerned with alcoholism, drugs and all the things we know about—I should say, we do not know about—I felt, as a result of the few cases I have dealt with on royal pardon, that the discretion is a terrible discretion to put in the hands of these officials. I think this is even more terrible. I certainly would not want to sit on any board at any time and I studied this. I majored in criminology in law school and I would not want to sit on any board and try to determine when a man was rehabilitated in terms of what we are discussing here today. I would not want that kind of discretion. I do not think anyone would.

• (1.00 p.m.)

I have a particular case that I am dealing with now which occurred eighteen years ago—of indecent exposure. The man is in a desperate state because of this now and he just cannot get a job. He is sinking fast. I am in constant touch with this fellow. I get the usual thing back from the Solicitor General: get him Royal pardon. That is not what he wants. He wants you people to have everything, all the details you need for investigation and law enforcement. He wants the social agencies of this country to have all the knowledge they want about him so that people who are sick like him are not going to continue. He also realizes there are various kinds of jobs he cannot have because people are aware of the kind of illness he had and that even after 18 years under the right conditions he will repeat this kind of crime, so wiping out his record is not going to do

any good. All he wants is to have his record wiped out in terms of not having to answer the kind of questions that are being put to him today. But right now this man would give you everything you wanted. What do we do? I do not think any commission is going to be able to say to this fellow, "You are rehabilitated". On the other hand, do amend acts?

Mr. Tolmie: Mr. Chairman, perhaps the interjection might be helpful to my colleague. It has been suggested that legislation be passed which would state, in effect, that the applicant was deemed not to have committed the offence and he would be legally entitled to say "No, I have not been charged; I have not been convicted". This is one possible solution.

Mr. Mackey: Yes, I saw that in some of the recommendations, but I think there is a problem here. Some people find it very difficult to live with a lie; very difficult. And the other hand when they get nicely settled someone might walk in and say: "Well, you have got Johnny Smith there; I saw him in court two or three years ago for burglary or some other offence". This is what you are faced with. I think you have to be honest about this but I think the only way we will ever get around it—and I do not think it is going to be an easy job—is to educate employers to realize that they are going to have to take these people and put them back into society. I think the time is ripe for educating employers. I think they are receptive to it right now.

Mr. Scott (Danforth): And governments.

Mr. Gaffney: It is so important to hear your views; it is very helpful. I hope I am not getting off the subject but I often get the question put to me by young offenders. They come to my office and say they are employed now, and ask me whether they should tell their fellow employees or not. I always advise them that it is an individual decision; they must make themselves and that I cannot advise them. Is there any comment you would like to make in this regard?

• (1.05 p.m.)

Mr. Boyle: I think your position of whether you should advise a young fellow to tell and tell his employer depends not on the young fellow so much as on the employer. What are his characteristics? What is he like?

(Translation)

Mr. Choquette: Would you suggest, for example, that the procedure be amended? Could not criminal procedure be amended, for example, to forbid, during an appearance before the court, any mention of previous convictions when they involve minor offences?

For example, when a person is accused of rape or of armed robbery, would there not be some offences about which we could forbid . . .

Mr. Boyle: I do not believe so; frankly, I do not believe so.

(English)

The Chairman: Gentlemen, it is one o'clock. Have you anything you want to add, Mr. Aiken?

Mr. Aiken: I have one question, Mr. Chairman.

The Chairman: Go ahead. I think you would have the opportunity of asking it.

Mr. Aiken: We have had a lot of hearings previously and I think that a certain consensus has developed in the Committee that is not apparent from the Bill. In fact, it might have been better had Mr. Tolmie redrafted the Bill after our previous hearings. It seems to me that the Committee is rather strongly considering a central register of convictions were not the file itself but a record of the offence would be maintained in a central register. All entries and inquiries concerning convictions would be made there and it would be from this central register that a record of conviction or a record of no conviction would be issued and the files themselves would not be destroyed. Would this meet the situation? That is, where the record of a conviction itself would be merely deleted from the record and a certificate of some sort given after a period of time?

Mr. Mackey: Frankly, I do not think anybody wants a certificate to have around. I think this kind of certificate is like telling a person who has just come out of a mental institution that he is the only sane one in the place.

Mr. Aiken: Perhaps I expressed it in the negative. What was really requested is that it would be the record itself that would be destroyed and not the file.

Mr. Boyle: The dissemination of this information to other departments on inquiry? I think that is what you are trying to say.

Mr. Aiken: Exactly, so that a person could say that there was no record of his conviction.

Mr. Boyle: It is pretty difficult to answer a question like that.

Mr. Mackey: Could I answer that, maybe in part? At the present time, if we are inquiring about a prisoner who is outside of our jurisdiction, we go to the central repository anyway. So, really this is already in effect. It would be just a matter of what we suggested, of putting them into a separate file and this is the file that has been pardoned or whatever the case may be.

Mr. Scott (Danforth): That is with the attorney general of each province, is it?

Mr. Boyle: No, I am talking now about the central repository here in Ottawa with the RCMP.

Mr. Aiken: I think that really is what the intent of the whole proceeding is: that the person would not have a record of his conviction but the conviction would still be there.

Mr. Mackey: Mr. Chairman, may I suggest that you talk to some member of the RCMP with regard to the central files because I think it is rather unwise for us to discuss them.

The Chairman: Just before I adjourn the meeting I want to thank you, Mr. Spearing, Mr. Mackey, Mr. Cookson, Mr. Boyle and Mr. Cassidy for your appearance before the Committee this morning, for the very excellent brief you have presented and for the information and guidance, and so on, that you have given to us. It will be of great benefit to the Committee in forming and drafting a recommendation to the House for its consideration. Thank you very much.

A P P E N D I X B

STATISTICAL DATA

Table 1. - Offence and Persons Charged Data Reported
by the Police for Criminal Code Offences
(except traffic), Canada, 1962 - 1966*

Year	Actual Offences	Offences Cleared			Persons Charged				
		Total Cleared	By Charge	Other- wise	Total Persons Charged	Adults		Juveniles	
						Male	Female	Male	Female
1962 No.	514,986	188,181	142,516	45,665	146,151	110,645	9,194	24,502	1,810
Rate (1)	3,338.6				947.5	1,896.9	158.4	1,266.0	97.7
Percent		36.5	27.7	8.8					
1963 No.	572,105	201,581	151,910	49,671	156,787	115,747	10,358	28,433	2,249
Rate (1)	3,637.5				996.9	1,954.1	175.3	1,428.1	118.1
Percent		35.2	26.5	8.7					
1964 No.	626,038	236,264	167,487	68,777	173,973	124,675	12,689	33,868	2,741
Rate (1)	3,900.2				1,083.8	2,065.9	210.3	1,663.7	140.8
Percent		37.7	26.7	11.0					
1965 No.	628,418	234,898	161,757	73,141	170,855	120,460	12,803	34,284	3,308
Rate (1)	3,831.0				1,041.6	1,954.4	207.4	1,648.6	166.5
Percent		37.4	25.7	11.7					
1966 No.	702,809	264,644	175,570	89,074	182,568	128,895	13,954	35,636	4,083
Rate (1)	4,183.4				1,086.7	2,041.6	221.2	1,678.1	198.7
Percent		37.7	25.0	12.7					

* Source: Uniform Crime Reporting Programme,
Judicial Section,
Dominion Bureau of Statistics.

(1) Rates per 100,000 population 7 years of age and over.

EXTRACT FROM: UNIFORM CRIME REPORTS
FOR THE UNITED STATES
FOR THE YEAR 1966

Summary

(This section is for the reader interested in the general crime picture. Technical data, of interest primarily police, social scientists, and other students, are presented in the following sections. If you wish assistance in the interpretation of any information in this publication, please communicate with the Director, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C., 20535)

Crime Capsule

Almost 3¼ million serious crimes reported during 1966; an 11 percent rise over 1965.

* * *

Risk of becoming a victim of serious crime increased 10 percent in 1966 with almost 2 victims for each 100 inhabitants.

* * *

Firearms used to commit more than 6,500 murders, and 43,500 aggravated assaults in 1966.

* * *

Daytime burglaries of residences rose 140 percent in 1966 over 1960.

* * *

Property worth more than \$1.2 billion lost as a result of 153,400 robberies, 1,370,000 burglaries, 1,790,000 larcenies, and 557,000 auto thefts. Police recoveries, however, reduced this loss by 46 percent.

* * *

Arrests of juveniles for serious crimes increased 4 percent in 1966 over 1960, while number of persons in the young age group, 10-17, increased 10 percent.

* * *

Arrests for Narcotic Drug Law violations rose 15 percent, 1960-1966. Narcotic arrests 1966 over 1965 up 28 percent influenced primarily by marijuana arrests in Western States.

* * *

Police solutions of serious crimes declined 8 percent in 1966.

* * *

Fifty-seven law enforcement officers murdered by felons in 1966. Firearms used as murder weapons in 96 percent of police killings since 1960.

* * *

Careers in Crime: Study disclosed 55 percent of offenders released to the street in 1963 rearrested within two and one-half years.

* * *

Fifty-seven percent of the offenders released on parole were rearrested within 2½ years.

* * *

Sixty-seven percent of prisoners released early in 1963 after earning "good time" were rearrested.

* * *

Eighty-three percent of those persons acquitted or dismissed in 1963 were rearrested within 30 months.

* * *

Seventy-two percent of persons granted probation in 1963 for auto theft repeated in a new crime.

* * *

Of the young offenders under 20 released in 1963, 65 percent repeated.

* * *

Mobility study reveals over 60 percent of the repeaters charged with robbery, burglary, auto theft, sex offenses and forgery were rearrested in two or more states during their criminal careers.

* * *

1966 police employee rate of 2 police employees per 1,000 population was first change since 1960.

* * *

CAREERS IN CRIME

In January, 1963, the FBI initiated a study of criminal careers. At the end of calendar year 1966, 160,310 criminal histories of individual offenders had been incorporated into the program.

The study is made possible by the cooperative exchange of criminal fingerprint data among local, state and Federal law enforcement agencies. The all-important fingerprint card submitted to the Identification Division of the FBI by these law enforcement agencies contains information which serves as a basis for statistical examination of careers in crime. While there is a lack of uniformity in submissions made by all law enforcement agencies for all criminal charges, generally it is the practice to submit a criminal fingerprint card on all arrests for serious crimes, felonies, and certain misdemeanors. Fingerprinting by police is a part of the "booking" procedure of placing a formal charge against an arrested person. The arrest and charge have substance and differ from temporary detention for questioning or investigation. On the Federal level almost all persons arrested are fingerprinted by the arresting Federal agency or United States Marshals. Federal prisons, state penitentiaries and county jails also submit fingerprint cards and related data to the FBI Identification Division.

As the fingerprint card constitutes a positive means of identification it becomes possible to obtain each offender's criminal history. There is a limitation, of course, in that the offender must first be detected, arrested, and a fingerprint card submitted at the time of arrest. Of equal importance is the disposition of each arrest which is also requested. FBI Identification Division fingerprint files of known offenders in this Program are "flushed" to provide an accurate means of follow-up concerning any future criminal involvement. As additional information is accumulated on these persons, it is added to the record which has been previously stored in a computer. These offenders are initially selected because they have become involved in the Federal process by arrest or release. The sample also includes serious state violators arrested as fugitives under the Fugitive Felon Act, as well as District of Columbia violators. Specifically excluded from this study and resulting tabulations are chronic violators of the immigration laws and fingerprints submitted by the military.

To gain insight into the career of criminal repeaters, an analysis was made of the records of

41,733 persons arrested in 1966 for a Federal crime or rearrested locally in 1966 after having been included in the Program previously due to a Federal arrest subsequent to January 1, 1963.

Table A describes the distribution by age group of the persons arrested in 1966. The emphasis upon the youthful offender is immediately apparent from the age distributions. It is noted that 46 percent of the persons in this group were in their twenties or younger in 1966. Significantly over 70 percent of the offenders were first arrested under the age of 25.

Table A.—Distribution by Age Group of Persons Arrested in 1966

Age group	Age, 1966		Age at first arrest	
	Number	Percent	Number	Percent
Under 20.....	3,237	7.8	18,682	44.6
20-24.....	9,601	23.0	11,768	28.2
25-29.....	7,579	18.2	4,718	11.3
30-39.....	10,966	26.3	4,160	10.0
40-49.....	6,652	15.9	1,705	4.1
50 and over.....	3,008	8.9	800	1.9
Total.....	41,733	100.0	41,733	100.0

Leniency in the form of probation, suspended sentence, parole and conditional release had been afforded to 51.6 percent of the offenders. After the first leniency, this group averaged more than 5 new arrests. For the purposes of this study probation, suspended sentence, parole and conditional release are referred to as "leniency." I go without saying that probation and parole are special forms of treatment of criminals, but since they represent a lesser punitive action than incarceration, the term leniency is used to point up this characteristic.

From an analysis of the mobility of these 41,733 offenders a significant fact emerges—nearly 40 percent of these individuals were arrested in one state and 57 percent in two or more states. Distribution by sex and race was also considered and indicates that 93 percent were males and 7 percent females; 66 percent were white, 29 percent Negro and 5 percent all other races.

Of 41,733 offender records which were processed, 36,506 were repeaters; that is they had a prior arrest on some charge. The average criminal career of the above repeaters amounted to more than ten years (span of years from first to last arrest). During the period of their criminal career this group averaged over 6 arrests each, 3 convictions and 2 imprisonments. Keep in mind

that disposition data is approximately 80 percent complete with regard to persons committing felonies and slightly less complete for those involved in misdemeanors or minor offenses.

These 41,733 individual criminal records are made up primarily of Federal offenders who were brought into the program due to their involvement in the Federal process. The fact that most of the Federal crimes as defined by statute are also local in nature allows one to infer that statistics concerning local offenders would closely approximate those included in this study. The violators contained in this Program generally are serious offenders and, therefore, likely repeaters since common law enforcement practice generally not to submit a fingerprint card on minor or petty crimes.

Profiles

Table B illustrates the profiles of known repeaters by type of crime. The table consists of profiles of repeaters who were arrested in calendar year 1966. It provides insight concerning the degree to which repeaters contribute to crime counts year in and year out.

These offenders included in Table B have been arrested on at least two occasions and were selected for inclusion in the study by type of crime used on their last charge in 1966. The average age

of these offenders ranged from 26 years for the auto thief to 45 years for the gambler. Considering the auto thief who repeated in that offense, his average age was 24 at the time of his first arrest for auto theft while the average age at first arrest for the gambler who repeated was 40 years of age. The extreme ranges of age at first arrest for any offense were the gambler at age 30 and the burglar and rapist at 19 years of age. The average age at first arrest is influenced upward since fingerprint cards are not submitted with any degree of consistency on juvenile offenders.

Criminal careers of these offenders ranged from 15 years for the gambler to 6 years for the more youthful auto thief. The burglar has the highest rate of repeating during a criminal career followed closely by those who were involved in robbery, narcotics, and fraudulent checks. Of the charges accumulated by individuals responsible for murder, assault, robbery, burglary, auto theft and rape, 50 percent or more were the more serious Crime Index type charges.

The narcotic offender ranked highest among those repeating in the same type of crime as indicated by 58 percent rearrests in this violation. The gambler and burglar followed closely with 57 and 56 percent, respectively. Of the auto thieves, 40 percent repeated in auto theft during the course of their criminal career, while 38 percent

Table B.—Profile of Known Repeaters Arrested in 1966 by Type of Crime

	Murder	Felonious assault	Robbery	Burglary	Auto theft	Rape	Sex offenses	Narcotics	Gambling	Bonus checks
Total number of subjects.....	237	1,500	2,013	2,439	2,264	319	276	2,729	1,234	2,598
Average age 1966.....	32	31	29	28	26	27	33	31	45	33
Average age first arrest for specific charge.....	31	29	26	24	24	26	31	27	40	29
Average age at first arrest.....	22	22	20	19	20	19	23	21	30	23
Average criminal career (yrs.).....	10	9	9	9	6	7	10	10	15	10
Average arrests during criminal career.....	6	7	8	9	6	6	7	8	6	8
Crime Index arrests.....	3	4	4	5	3	3	2	2	1	2
Frequency of arrest on specific charge (percent):										
One.....	94	74	62	44	61	81	70	43	42	52
Two.....	5	17	26	26	22	17	13	21	20	21
Three or more.....		9	12	30	18	3	11	37	37	27
Frequency of leniency action on any charge (percent):										
One.....	27	29	30	24	26	32	30	28	23	32
Two.....	7	8	12	17	10	11	13	11	7	14
Three or more.....	4	6	8	9	7	5	8	9	4	11
Total (percent).....	38	43	51	60	45	48	51	48	34	57
Frequency on specific charge (percent).....	3	7	11	17	25	5	7	25	11	25
Average arrests after first leniency.....	5	6	7	7	5	5	6	7	6	6
Utility (percent):										
Arrests in 1 State.....	25	27	27	20	21	37	35	54	68	32
Two States.....	40	36	29	22	23	35	34	29	21	26
Three or more States.....	26	27	34	38	36	28	31	18	11	42

of the robbers repeated in that category. Those involved in fraudulent check activities repeated at the rate of 48 percent in this type of crime. For those offenders, involved in crimes against the person—murder, rape and felonious assault—the repetition rate in the same criminal act is much lower than property offenders. The frequency of probation, suspended sentence and parole granted to these offenders ranged from 34 percent for gambling to 60 percent for those who had been charged with burglary. There appears to be a similarity between the burglar and the bogus check offender in that 57 percent of the latter were granted the above forms of leniency and both of these criminal types have a high rate of recidivism in the same type offense. Leniency was granted most frequently for specific charges involving the bogus check offender, narcotic violator, and auto thief.

The robber, burglar, auto thief, sex offender and forger appear to have the highest rate of mobility with over 60 percent having been arrested in two or more states during the course of their criminal career.

30 Month Follow-Up

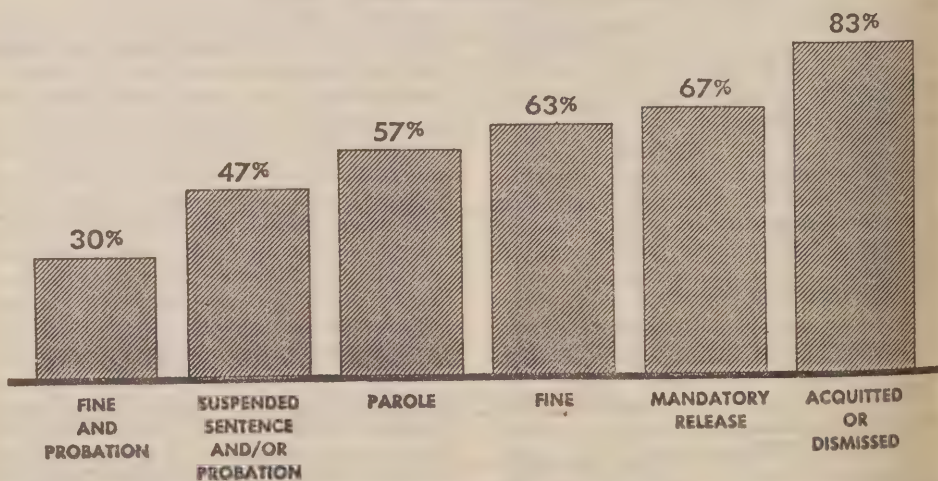
A study has been made of persons included in the Careers in Crime Program who were released from custody in 1963. The records of these persons were followed for the next 30 months with the cutoff for this study being June 30, 1966. Inasmuch as they were already part of the Careers in Crime Program new arrests were stored on magnetic tape and necessary items for this study specifically recalled.

Type of Release

Of all offenders (17,837) released to the street in 1963, 55 percent were rearrested for new offense by June 30, 1966. Chart 18 indicates that persons arrested on a new charge within 30 months ranged from 30 percent for those released with a fine and probation to 67 percent for offenders granted mandatory release by a penal institution. The percentage figure for parole includes 139 persons handled by Pre-Release Guidance Centers (Halfway Houses) of whom 75 percent were arrested within 30 months. It is interesting to note that 83 percent of those acquitted or dismissed in 1963

Chart 18

PERCENT OF PERSONS REARRESTED WITHIN 30 MONTHS BY TYPE OF RELEASE IN 1963



FBI CHAI

were arrested on a new charge within 30 months. As indicated earlier, formal police charge and the submission of a fingerprint card is done generally for felonies or serious misdemeanors. For example, only 16 percent of all rearrests were for drunkenness, disorderly conduct, serious moving traffic violations, and vagrancy. In most instances these were secondary arrests of the same offender who also was arrested for a more serious offense. All offenders who repeated during the two and one-half year period averaged two arrests.

Age

A further examination of persons released in 1963 was made by age group. Chart 19 reflects the percentage of persons, by age, who were arrested on new charges after being released in 1963. The overall high percentage figures are evident as well as the large concentration among youthful offenders.

The various types of treatment; probation, parole and mandatory release for persons released

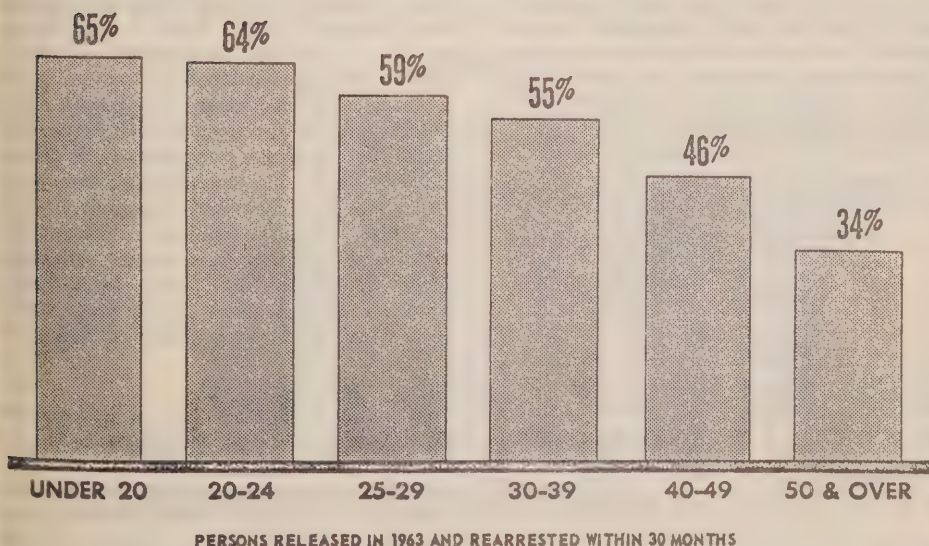
in 1963, when broken down by percentage figures disclose the highest degree of recidivism was among the more youthful offenders. Of those granted probation, 60 percent under 20 years of age and 54 percent in the age group 20 through 24 were arrested on new charges. Considering those who were granted a mandatory release, 81 percent of those under 20 and 80 percent of those falling in the age group 20 through 24 repeated within the next 30 months. Statistics describing those persons released on parole showed that 68 percent of the offenders under 20 years of age and 71 percent of those 20 through 24 years of age were repeaters within 2½ years.

Mobility

The tendency on the part of criminal offenders to move about the Nation is illustrated by percentage comparisons describing the amount of mobility of those persons who were rearrested after release in 1963 (Chart 20). For those granted parole, 61 percent of new charges against these

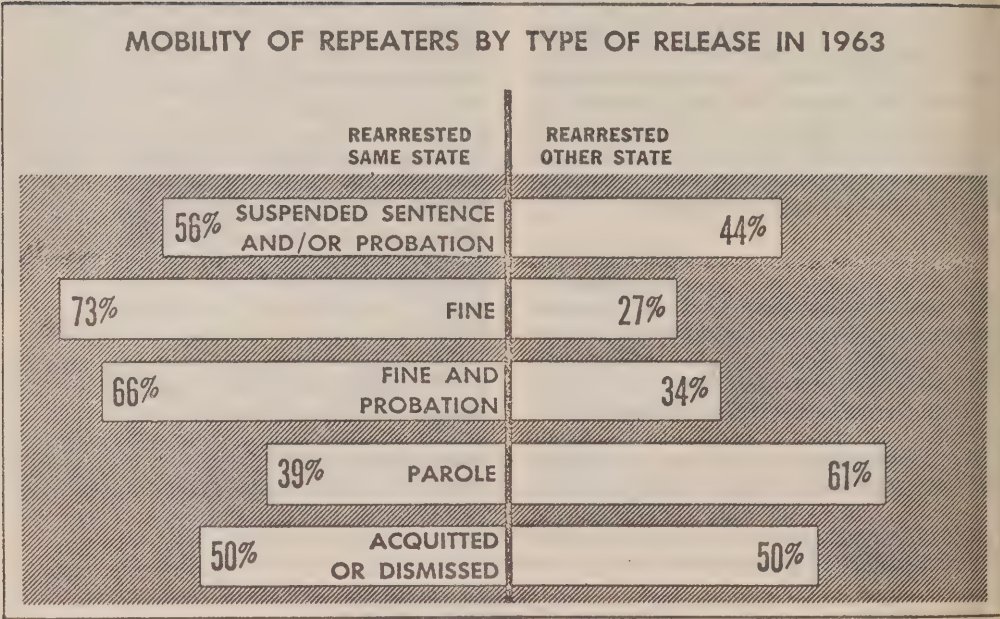
Chart 19

PERCENT REPEATERS BY AGE GROUP



FBI CHART

Chart 20



FBI CHART

people were initiated in another state while 44 percent of new charges lodged against persons released on probation and/or suspended sentence were made in a state other than the one in which they were originally convicted. The overall degree of mobility is high particularly with regard to the more serious offenses.

Table C.—Mobility of Repeaters Released in 1963 by Specific Charge

Charge	Total rearrested	Percent rearrested in same State	Percent rearrested in other State
Robbery.....	218	52	48
Assault.....	133	64	36
Burglary.....	302	54	46
Larceny.....	1,287	64	36
Auto theft.....	2,639	26	74
Narcotics.....	657	70	30
Fraud.....	265	73	27
Gambling.....	98	85	15
Forgery.....	1,344	55	45
Liquor law violations.....	921	74	26

Significant facts emerge from an analysis of mobility of persons within 30 months after their

release in 1963. Table C portrays the mobility of these repeaters by type of charge on which they were released in 1963. While a high degree of mobility, 52 percent, is apparent regarding all types of criminal offenders, some types of criminals are more mobile than others. The narcotic offender and the gambler are primarily local, repeating 70 percent and 85 percent, respectively, in the same state while the auto thief repeated only 26 percent in the same state and 74 percent in another state. Mobility is certainly an important factor with regard to robbery and burglary offenders as almost half of the new arrests for persons involved in these types of crimes were made in states other than where originally charged in 1963.

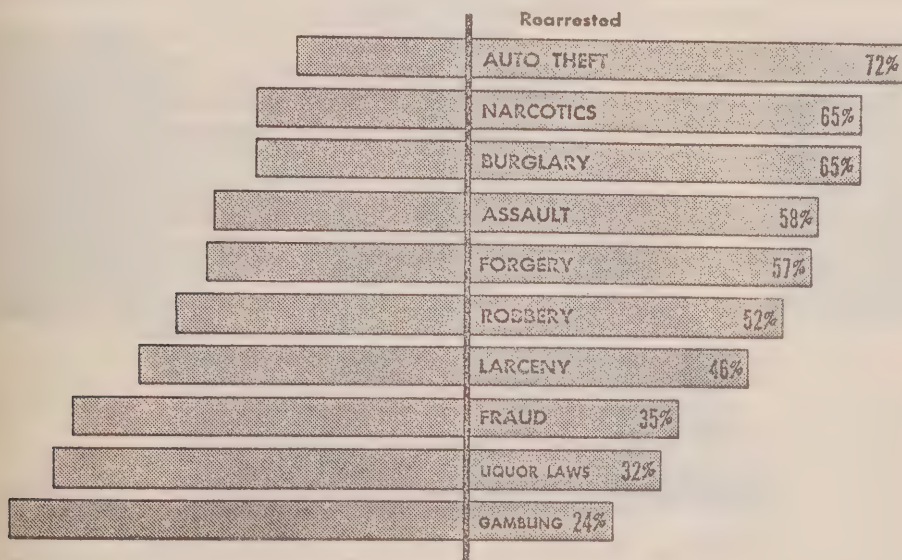
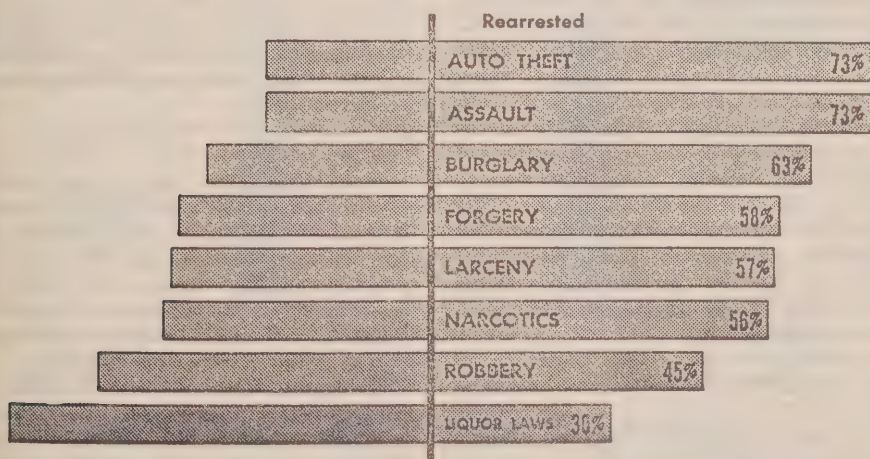
Type of Crime

The general tendency toward greater recidivism appears in the group engaged in the more serious types of crimes. This is demonstrated in Charts 21 and 22 which describe the percent of those released on probation, parole or granted mandatory release who accumulated new charges within 30 months following their release in 1963. The percentage of repeat for the group

Chart 21

PERCENT REPEATERS

BY TYPE OF CRIME AND RELEASE IN 1963

(PROBATION)**(PAROLE)**

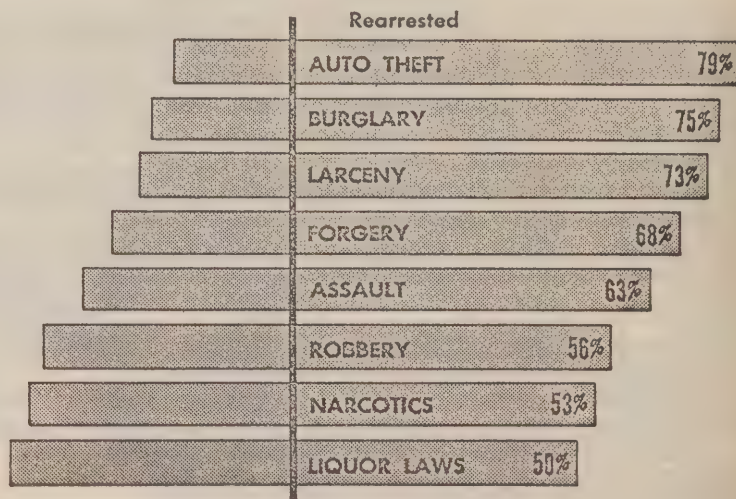
FBI CHART

Chart 22

PERCENT REPEATERS

BY TYPE OF CRIME AND RELEASE IN 1963

(MANDATORY RELEASE)



FBI CHART

released on probation ranged from 72 percent for the auto thief, 65 percent for the narcotic and burglary offenders to 24 percent for persons released on gambling charges. A similarity exists with those released on parole in 1963. Of those persons released on parole 73 percent of the auto thieves and assault violators repeated, 63 percent of the burglars repeated, while only 30 percent of those released on parole for Federal liquor law violations repeated within the next 30 months. While a degree of recidivism is evident with respect to all those released on probation, parole, or granted mandatory release there is obviously a higher degree of recidivism among individuals involved in the more serious crimes.

The tendency toward a lesser degree of recidivism among those persons released on probation or fine and probation is understandable when the type of offender is considered. Certain types of crime, for example income tax evasion, theft of Government property, liquor law violations, and embezzlement are perpetrated by

persons who generally have roots in the community and are less likely to repeat. Many of these offenders are granted probation or fine and probation, therefore, it can be expected that recidivism will be lower when these types of circumstances are considered.

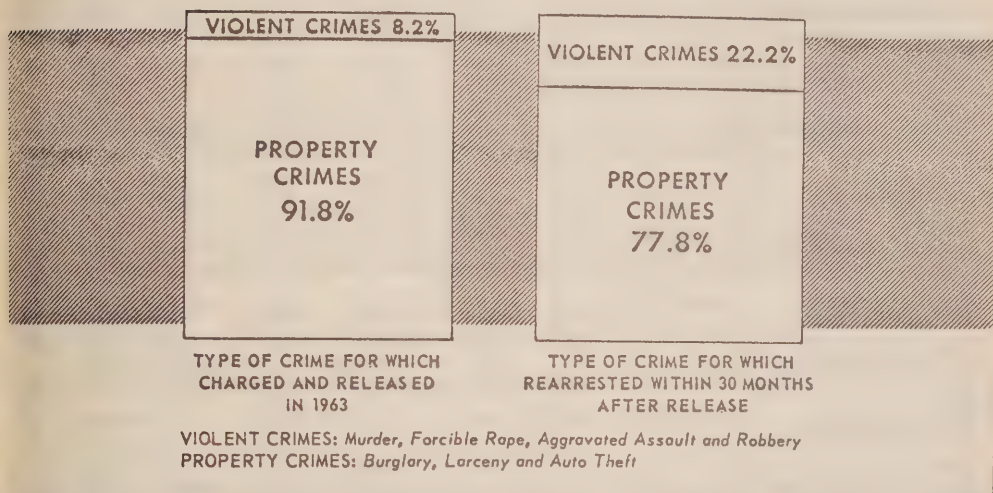
Criminal Progression

During 1963, 5,761 persons were released for various crimes coming under the general categories of (1) crimes against the person (murder, forcible rape, and aggravated assault), (2) crimes against property (burglary, larceny, and auto theft), and (3) robbery. These persons, during the next 30 months, accumulated 13,180 new charges or an average of over 2 new arrests per person.

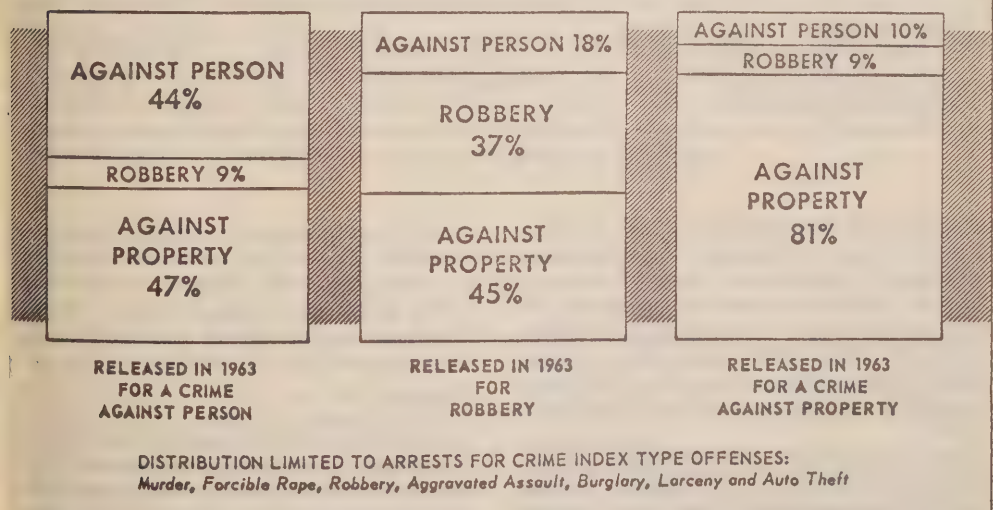
The figures were broken down to determine the existence of any trends regarding the type of crime committed by known repeaters. Of those persons released in 1963, 258 were rearrested after a conviction for a crime against the person, 5,291 for committing a crime against property, and 212

Chart 23

TENDENCY TOWARD MORE VIOLENT CRIMES 5761 OFFENDERS



DISTRIBUTION OF NEW CHARGES WITHIN 30 MONTHS AFTER RELEASE



FBI CHART

Table D.—30 Month Follow-up of Persons Released in 1963 by Age, Race, and Sex

Age	Total	White	Negro	Other	Male	Female
Under 20:						
With subsequent charge.....	1,180	868	202	110	1,145	35
With no subsequent charge.....	641	470	127	44	580	61
Total.....	1,821	1,338	329	164	1,725	96
Percent with subsequent charge.....	64.8	64.9	61.4	71.4	66.4	36.6
20-24:						
With subsequent charge.....	2,539	1,813	580	146	2,376	163
With no subsequent charge.....	1,405	1,111	256	38	1,216	189
Total.....	3,944	2,924	836	184	3,592	352
Percent with subsequent charge.....	64.4	62.0	69.4	79.3	66.1	46.3
25-29:						
With subsequent charge.....	1,768	1,136	524	98	1,657	101
With no subsequent charge.....	1,224	886	311	27	1,077	147
Total.....	2,992	2,022	835	125	2,734	258
Percent with subsequent charge.....	59.0	56.2	62.8	78.4	60.6	40.7
30-39:						
With subsequent charge.....	2,501	1,495	873	133	2,360	141
With no subsequent charge.....	2,066	1,444	577	46	1,835	231
Total.....	4,567	2,939	1,450	178	4,195	372
Percent with subsequent charge.....	64.8	50.9	60.2	74.7	58.3	37.6
40-49:						
With subsequent charge.....	1,316	853	394	69	1,250	66
With no subsequent charge.....	1,551	1,113	412	26	1,408	143
Total.....	2,867	1,966	806	95	2,658	209
Percent with subsequent charge.....	45.9	43.4	48.9	72.6	47.0	31.1
50 and over:						
With subsequent charge.....	559	391	127	41	545	14
With no subsequent charge.....	1,097	858	220	19	1,025	72
Total.....	1,656	1,249	347	60	1,570	86
Percent with subsequent charge.....	33.8	31.3	36.6	68.3	34.7	16.1
All ages:						
With subsequent charge.....	9,853	6,556	2,700	597	9,233	620
With no subsequent charge.....	7,984	5,882	1,903	199	7,141	843
Total.....	17,837	12,438	4,603	796	16,474	1,463
Percent with subsequent charge.....	55.2	52.7	58.7	75.0	56.7	35.1

for committing robbery offenses. This follow-up, 30 months later, indicates the tendency toward commission of more violent crimes by repeaters. Chart 23 depicts this trend by percentage distribution. Of all new arrests within the 30 months period for Crime Index type offenses, crimes against property amounted to 4,116, while robbery increased to 558 and crimes against the person to 619.

Chart 23 illustrates the distribution of new Crime Index charges for those persons released in 1963 and rearrested. These charts indicate that the large proportion of criminal repeating is

in the property crimes of burglary, larceny, and auto theft. However, 19 percent of the rearrests for the property crime offenders were for the more serious crimes of violence. Primarily the result of this escalation, violent crime offenses were more than double on rearrest than in 1963.

Conclusion

The Careers in Crime data documents the existence of the persistent or hard-core offender and the substantial extent to which he contributes to the crime problem. The tendency of this offender to repeat in crimes of a more serious

Table E.—30 Month Follow-Up by Age Group and Type of Release in 1963

Disposition	Under 20	20-24	25-29	30-39	40-49	50 and over	Total
Probation and suspended sentence:							
With subsequent charge	607	923	620	811	403	171	3,535
With no subsequent charge	411	785	600	977	744	490	4,007
Total	1,018	1,708	1,220	1,788	1,147	661	7,542
Percent with a subsequent charge	59.6	54.0	50.8	45.4	35.1	25.9	46.9
Prison:							
With subsequent charge	63	213	148	252	187	88	951
With no subsequent charge	27	70	77	138	138	108	558
Total	90	283	225	390	325	196	1,509
Percent with a subsequent charge	70.0	75.3	65.8	64.6	57.6	44.9	63.0
Parole and probation:							
With subsequent charge	8	48	43	62	47	23	231
With no subsequent charge	15	81	60	123	130	134	543
Total	23	129	103	185	177	167	774
Percent with a subsequent charge	34.8	37.2	41.7	33.5	26.6	14.6	29.8
Quilted or dismissed:							
With subsequent charge	84	168	174	228	105	49	806
With no subsequent charge	14	25	32	42	26	25	164
Total	98	193	206	268	131	74	970
Percent with a subsequent charge	85.7	87.0	84.5	84.3	80.2	66.2	83.1
Parole:							
With subsequent charge	223	966	418	341	168	57	2,263
With no subsequent charge	151	389	222	382	258	192	1,694
Total	474	1,355	740	723	416	249	3,957
Percent with a subsequent charge	68.1	71.3	56.5	47.2	38.0	22.9	57.2
Mandatory release:							
With subsequent charge	95	221	355	809	416	171	2,067
With no subsequent charge	23	55	133	404	255	148	1,018
Total	118	276	488	1,213	671	319	3,085
Percent with a subsequent charge	80.5	80.1	72.7	66.7	62.0	53.6	67.0
Final:							
With subsequent charge	1,180	2,559	1,768	2,501	1,316	559	9,853
With no subsequent charge	641	1,405	1,224	2,068	1,551	1,097	7,984
Grand total	1,821	2,964	2,992	4,567	2,867	1,656	17,837
Percent with a subsequent charge	64.8	64.4	59.0	54.8	45.9	33.8	56.2

*Prisoners are released early under supervision by laws based on "good-time" earned while in the institution.

ture, coupled with a high degree of mobility, further complicates the problem. It is apparent that rehabilitation methods have not been very successful with this type of criminal behavior. It is obvious that the criminal justice system needs to re-examine its methods if criminal careers are to be aborted.

Police arrest supported by the submission of a fingerprint card was used as the basis of recidivism

in this analysis. Conviction and imprisonment data will be used in future studies. The delay between police formal charge and final court disposition prohibited the use of conviction data in this analysis.

The accompanying tables provide added insight into the problems of repeaters. The figures are based upon a 30 month follow-up after the offenders were released in 1963.

Table F.—30 Month Follow-up by Age and by Specific Charge on Which Released in 1963

Offense	Under 20	20-24	25-29	30-39	40-49	50 and over	Total all ages
Assault:							
With a subsequent charge.....	14	20	21	25	10	4	106
With no subsequent charge.....	8	11	11	16	7	5	68
Total.....	22	31	32	40	17	9	165
Percent with a subsequent charge.....	69.2	73.2	65.0	62.5	58.8	55.6	64.6
Burglary:							
With a subsequent charge.....	67	63	49	39	15	6	239
With no subsequent charge.....	30	23	16	21	12	4	106
Total.....	97	86	65	60	27	10	245
Percent with a subsequent charge.....	69.1	73.3	75.4	65.0	55.6	40.0	69.2
Larceny:							
With a subsequent charge.....	122	303	175	275	111	40	1,026
With no subsequent charge.....	103	215	143	233	101	56	911
Total.....	225	518	318	508	212	96	1,950
Percent with a subsequent charge.....	54.2	58.5	55.0	54.1	40.8	41.7	53.7
Auto Theft:							
With a subsequent charge.....	673	1,004	408	420	233	61	2,800
With no subsequent charge.....	260	307	137	138	64	21	927
Total.....	933	1,311	545	558	297	82	3,726
Percent with a subsequent charge.....	72.1	76.6	74.9	75.5	78.5	74.4	75.7
Robbery:							
With a subsequent charge.....	24	42	27	58	21	8	180
With no subsequent charge.....	12	27	18	52	25	22	146
Total.....	36	69	45	110	46	30	326
Percent with a subsequent charge.....	60.7	60.9	60.0	52.7	45.7	26.7	63.2
Narcotics:							
With a subsequent charge.....	21	130	182	316	86	28	763
With no subsequent charge.....	6	47	74	211	124	69	627
Total.....	27	177	256	527	210	97	1,387
Percent with a subsequent charge.....	77.8	73.4	71.1	60.0	41.0	28.9	69.9
Gambling:							
With a subsequent charge.....		6	4	28	29	25	92
With no subsequent charge.....	1	4	12	38	72	80	207
Total.....	1	10	16	66	101	105	299
Percent with a subsequent charge.....		60.0	25.0	42.4	28.7	23.8	30.8
Forgery:							
With a subsequent charge.....	38	215	227	354	184	59	1,077
With no subsequent charge.....	20	142	124	213	140	59	700
Total.....	58	357	351	567	324	118	1,776
Percent with a subsequent charge.....	55.9	60.2	64.7	62.4	56.8	50.0	60.0
Liquor Law Violations:							
With a subsequent charge.....	36	101	138	251	184	140	850
With no subsequent charge.....	67	169	179	354	228	336	1,433
Total.....	103	270	317	605	412	476	2,283
Percent with a subsequent charge.....	35.0	37.4	43.5	41.5	35.9	29.4	37.7
Fraud:							
With a subsequent charge.....	3	25	37	87	59	12	203
With no subsequent charge.....	1	22	54	121	96	68	362
Total.....	4	47	91	208	155	80	565
Percent with a subsequent charge.....		53.2	40.7	39.9	37.4	15.0	37.9

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

TUESDAY, NOVEMBER 7, 1967

RESPECTING

The subject-matter of Bill C-4,

An Act concerning reform of the bail system.

APPEARING:

Mr. Barry Mather, M.P., sponsor of Bill C-4.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, November 2, 1967.

Ordered,—That the name of Mr. Stafford be substituted for that of Mr. Ryan on the Standing Committee on Justice and Legal Affairs.

Attest

ALISTAIR FRASER,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

TUESDAY, November 7, 1967

(6)

The Standing Committee on Justice and Legal Affairs met at 11.05 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Brown, Cameron (*High Park*), Cantin, Forest, Gilbert, Goyer, Latulippe, MacEwan, Otto, Pugh and Mr. Woolliams (11).

Also present: Mr. Barry Mather, M.P.

The Chairman read the Order of Reference dated June 29, 1967, which referred the subject-matter of Bill C-4 *An Act concerning reform of the bail system*, to the Committee.

The Chairman advised the Committee that he had been in touch with three prospective witnesses concerning the subject-matter of Bill C-4, as agreed at a meeting of the Subcommittee on Agenda and Procedure, held on October 19, 1967. The first of these, Mr. Henry H. Bull, Q.C., Senior Crown Attorney for Metropolitan Toronto, County of York, Ontario, has agreed to appear at the next Committee meeting on November 9, 1967, if the Committee concurs. An invitation was extended to Mr. A. M. Kirkpatrick, Executive Director, John Howard Society. He declined the invitation, noting that he had no testimony which would be helpful at this time. The third prospective witness who was contacted is Professor M. L. Friedland, Associate Professor, Faculty of Law, University of Toronto. Professor Friedland has agreed to appear at a time convenient for the Committee.

The Committee proceeded to the consideration of the subject-matter of Bill C-4, *An Act concerning reform of the bail system*. The Chairman introduced Mr. Barry Mather, M.P., sponsor of this Bill.

Mr. Mather made a statement and was questioned thereon.

The Committee agreed to table the following document presented by Mr. Mather during his testimony (Exhibit C-4-1):

*Public Law 89-465
89th Congress, S. 1357
June 22, 1966
An Act*

*To revise existing bail practices in courts of the
United States, and for other purposes.*

In addition to the persons mentioned by the Subcommittee on Agenda and Procedure, some Members suggested that one or two Magistrates should be invited to appear in connection with the subject-matter of Bill C-4. This matter was left with the Subcommittee to consider further.

Following an announcement regarding the next meeting, on motion of Mr. Gilbert, seconded by Mr. Forest, it was

Resolved,—That reasonable living and travelling expenses be paid to Mr. Henry H. Bull, Q.C., who has been called to appear before this Committee on November 9, 1967, in the matter of Bill C-4.

The Chairman thanked Mr. Mather for his presentation.

The Chairman then introduced Mr. Hugh Stewart, the new Clerk of the Committee, replacing Mr. Fernand Despatie.

At 12.10 p.m., the Committee adjourned until Thursday, November 9, 1967 at 11.00 a.m.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

(11.05 a.m.)

Tuesday, November 7, 1967

The Chairman: Gentlemen, we now have a quorum. I have no doubt that other members will be here later on.

Our Order of Reference is that the subject matter of Bill C-4, an Act concerning reform of the bail system, be referred to the Standing Committee on Justice and Legal Affairs.

At the suggestion of the Steering Committee, I have been in communication with Mr. Henry H. Bull, Q.C., Crown Attorney for the County of York and for the metropolitan area of Toronto. Mr. Bull has kindly consented to appear before the Committee on Thursday of this week. He is an acknowledged expert on the subject, and is the chairman of an ad hoc committee which is dealing with bail bonds.

I wrote to Mr. Kirkpatrick, Executive Director of the John Howard Society, who, though honoured at the invitation, does not feel he could be helpful to the Committee. Professor M. L. Friedland of the University of Toronto, who has written on the subject matter, has indicated that he is willing to appear before the Committee and that his timetable is such that he could come at any time we wish. I think that is all which arises out of the meeting of the Steering Committee.

I would now like to introduce a gentleman who, of course, needs no introduction, Mr. Barry Mather, M.P., sponsor of Bill C-4, and ask him to make his statement on the subject matter.

Mr. Barry Mather (Sponsor of the Bill):
Thank you, Mr. Chairman.

It is a source of satisfaction to me to have the opportunity of bringing the subject matter of Bill C-4 to the attention of the Justice and Legal Affairs Committee of the House of Commons.

The principle of the Bill aims at a more liberal code in respect to the present system of bail, and seeks to give us legislation which would better reflect the traditions of British justice than does our present practice in Canada.

As I suppose hon. members well know, I am not a lawyer, and there may well be weaknesses in what I propose, or how I propose it.

However, my aim in presenting the Bill is to underline the need for action and to encourage reform of the present bail situation.

As the Chairman has indicated, there may be a number of people coming before the Committee at a later date to give their opinions on what is proposed. My understanding is that they will be persons with a practical knowledge in this field, who, from one side of the courtroom or another, have dealt with the results of granting or withholding bail. In that way you should get useful information before coming to any decision.

• (11.10 a.m.)

For my part my intention this morning is to present the aims of the Bill and to quote from some statements in support of the principles involved in it. But, first let me tell hon. members that the proposal which I am making would have the same effect in our country as had the law signed by President Johnson last year in the United States.

In signing that measure, the President said:

It is a move to begin to ensure that defendants are considered as individuals and not as dollar signs.

That our Canadian scales of justice are sometimes weighted not with mercy but with money has been apparent in the matter of before-trial detention. A detailed study of our bail system, made a few months ago by Professor Friedland of the Faculty of Law, University of Toronto, found:

In the setting of bail, there is an undue pre-occupation with its monetary aspects. The tragedy is that a large percentage of persons are unable to raise the bail that is set. The ability of the accused to marshal funds or property in advance determines whether he will be released, and may have an effect on the outcome of his case.

The professional bondsmen and money lenders operate more or less openly. Actually the system does not do too much to ensure the appearance of the accused in court and the people who lend the money may reap substantial profits.... Some accused, in order to raise the money, have been known to commit further offences while waiting trial. The system tends to favour the professional criminal who is more likely to know, and be trusted by, the bondsmen. It seems to me that here is a field requiring study and possible reform. I would say that if money, rather than character, is not to determine justice the accused should be released, if he is to be released at all, on his own recognizance, or in appropriate cases with recognizances by sureties in reasonable amounts recoverable if the accused fails to appear.

The Bill which I am proposing as a means to meet and reform the existing bail system, states:

Notwithstanding anything in the Criminal Code or any other act or statute of the Parliament of Canada, any person charged with an offence under an act of the Parliament of Canada, other than an offence punishable by death or imprisonment of life, shall, at his appearance in court, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the court, unless the judge determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required.

When a judge makes such a determination, he shall, either in lieu of or in addition to the method of release referred to, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any of the combination of the following conditions:

Place the person in the custody of a designated person or organization agreeing to supervise him;
place restrictions on the travel, association, or place of abode of the person during the period of release;
require the execution of an appearance bond in a specified amount and the deposit in the registry of the Court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit

to be returned upon the performance of the conditions of release;
require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or
impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

Further, any time spent in custody at the prison, penitentiary, reformatory or jail previous to the pronouncing of the sentence shall be credited to any person convicted of an offence."

I believe or at least I hope, that hon. members will agree that the proposed legislation gives the judge adequate discretionary powers and powers of compelling appearance of the accused, while, at the same time, providing greater authority than is now the case for the court to judge the character rather than the money of the accused in determining justice.

Mr. Chairman, I was very much encouraged at the time the Bill was being considered at Second Reading to find support from two notable sources—one the Leader of the Official Opposition, the Right Honourable John G. Diefenbaker, whom I would like to quote a little later, and the other from the government side of the House the Honourable Member for York-Scarborough.

I feel this actually, on reflection that both these gentlemen made a better case for sending the Bill to your Committee than I did.

I would like to quote Mr. Robert Stanbury the Honourable Member for York-Scarborough:

What the sponsor of this bill does attempt to do is to put the emphasis on the release of prisoners rather than their detention. The general effect of the present sections of the Criminal Code is that the court may release an accused on bail on his recognizance with or without a deposit or with or without sureties. Aside from the special case of offences punishable by death or life imprisonment, the proposed bill would make the general rule that an accused must be released without having to find sureties or deposit money. Second, the conditions under which sureties, cash deposits or other restrictions could be imposed would be limited to the case where the judge considers that release without bond

will not assure attendance of the accused at trial.

Certainly, Mr. Speaker, there have undoubtedly been abuses under the present system.

I am still quoting Mr. Stanbury:

In a submission to the Canadian Committee on Corrections the John Howard Society had this to say:

This is Mr. Stanbury quoting the John Howard Society's submission:

The practice of allowing bail is obviously to put the accused at the least inconvenience until his guilt or innocence is established. However, there is a crucial problem related to the establishing of the amount of bail. A bank robber might be willing to forfeit a large amount put up through the receipts of his crime whereas a \$50 bond may be an impossibility for a married man on a low income. Thus the poor, the homeless and the friendless may be discriminated against. If unable to face the economic and social distress of incarceration while awaiting trial the accused may borrow money for bail which might leave him without funds to retain a lawyer, putting him at an immediate disadvantage in court.

The John Howard Society recommends: a much broader use of an accused's own recognizance; bail set at a minimum amount consistent with the likelihood of his appearing in court; consideration of the accused's economic situation in determining bail; use of bailbondsmen to be discouraged as the part payment put up by the accused is probably sufficient in itself; and the establishment of an investigation bureau in large metropolitan areas, where the accused is not likely to be well known, to establish quickly his economic position.

Similar recommendations were made by the John Howard Society to the McRuer royal commission

Mr. Chairman, to quote further from Mr. Stanbury, he says:

I think that the sponsor's proposal, for the committee on justice and legal affairs to study this problem, is reasonable. There should be an examination of the other side of the coin. The association of police chiefs should be given an oppor-

tunity to make representations to members of parliament so that the difficulties, as seen by the police, can be explored. Members of the legal profession and other interested groups should be given an opportunity to express their opinions. It seems to me that this problem ought to be attacked by parliament at this session if possible, and when changes are introduced in the Criminal Code I hope that bail will be one of the subjects of change.

Mr. Chairman, that is the conclusion of the quotation from Mr. Stanbury.

• (11.20 a.m.)

An editorial appearing in the *Toronto Daily Star* of April 28, 1967, put this problem and proposed solution in very good words, in my opinion, and I am quoting from it:

The futility of the bail system in Canadian courts was perfectly illustrated by the case of James Royal here this week.

This is in Toronto.

Royal was charged with rape and committed for trial in the Supreme Court. Bail was fixed at \$3,000. A friend of Royal's persuaded a Scarborough couple to post it for him, although they did not know the accused.

Royal failed to appear for trial, and has apparently left the province. His bail was accordingly forfeited. Chief Justice Gale reduced the forfeiture, but the Scarborough couple will still have to pay \$2,000.

What purpose did this whole procedure serve?

The posting of \$3,000 did not prevent Royal from fleeing the jurisdiction. It will not make it any easier to track him down and arrest him.

The only effect has been to subject a couple, whose sole offence was to be too trusting, to a heavy penalty.

Yet, at the same time many people who are charged with much less serious offences and who have no intention or likelihood of fleeing to escape trial, are kept in jail, sometimes for months, because they or their relatives cannot raise the required cash or property bail.

Would it not be simpler and better when a man is committed for trial for the magistrate to consider whether he can safely release the defendant on his

own recognizance—that is, on his undertaking to appear before the court on the day set?

In the majority of cases, release on these terms would be quite safe. The average defendant, especially if he has a job and a family, is not likely to take to flight and become a fugitive from justice for the rest of his life.

There are instances where because of the extreme seriousness of the charge, or the defendant's past record, or for some other reason, there is real cause to fear that he will skip out.

In that case it may be necessary to keep him in jail until the trial. In the James Royal case, for example, it might have been wiser to keep the accused behind bars.

But, the decision to hold or release the accused should be based on the circumstances of the case and the man's position and reputation—not, as it is now, on whether he can raise a specified amount of money or persuade someone else to put it up for him.

I would like to conclude, Mr. Chairman, by one further quotation from a notable source, that is from Mr. Diefenbaker, who said on the second reading of this bill:

Mr. Speaker, this is the first occasion in many, many years that I have spoken on a private member's resolution, or bill. I do so because of my impression, gained over years at the bar, that in the field of bail there has been a series of shortcomings that all of us should have looked into long ago.

Too often the possession of great riches or the ability to put up a large amount of bail places certain people in an advantageous position while the poor must remain in custody.

Under the proposed legislation,

The judge has wide discretion. The safeguards are here. The trend in criminology today is not to imprison in cases where it is possible to be reasonably assured, following a first offence, that the ends of justice will be met without the imposition of imprisonment. No one should be sent to prison for any period of time if the judge before whom an application for bail is made can be given a reasonable assurance that the person concerned will turn up...

I say to the hon. member who introduced this bill that strong criticism can be levelled against all of us for not having brought about years ago the implementation of the plan he presented. There may be shortcomings in certain parts of it; there may be alterations which should be made. But the principle deserves to be accepted...

In conclusion, Mr. Chairman, I repeat that the aim of the Bill is to ensure that all persons, regardless of their financial status, shall not be needlessly detained pending their appearance to answer charges and acts of the Parliament of Canada where detention serves neither the ends of justice nor the public interest.

The Chairman: Thank you very much, Mr. Mather, for your clear and comprehensive statement of the principles of your Bill. You are now subject to the usual questioning your statement. I note that Mr. Otto has a question, and I have no doubt that other members will have some questions to ask.

Mr. Otto: Mr. Mather, I agree with the principle of your Bill, but when you say that you are going to leave it to the discretion of the judge you are talking about puis judges or magistrates in most cases. I am sure you will also agree that magistrates hear 30 or 40 cases a day. You are aware that at the present time they have the discretion to release a person on his own recognizance. I know that you will not hear this from Mr. Bull, who will probably deny it, but invariably the judge follows the advice of the administration.

What makes you think that the administration is going to advise the judge to release a person when the administration, of course, loves nothing better than to have him present at all times so that it will not spoil the order of cases? What change do you think will be brought about by the introduction of this Bill, if you leave it to the judge's discretion?

Mr. Mather: Mr. Chairman, if we adopt the principles which I have tried to put forward in my Bill we would change a permissive act on the part of the magistrate to one in which the emphasis would at least be put on release. If the changes that I have suggested were made I think you would find that the administration would change with them.

Mr. Otto: As I said, you already have the discretion in the judge. Have you considered

writing into this Bill a series of mandatory conditions; that, for instance, in the case of a first offender, or a person who has had a good record of employment, or who has a family and so on, the judge must arbitrarily allow bail on his own recognizance? Have you considered putting in regulations which would at least take away a portion of the discretion?

Mr. Mather: I think your suggestion is a very good one. If the principles I put forward were approved, no doubt the Committee or the Justice Department might consider jettisoning out mandatory conditions. I have no quarrel with what you say.

Mr. Otto: Consider the professional bail bondsman. I hope I have the opportunity to examine Mr. Bull on this, but you understand that they actually encourage the professional bail bondsman because if he provides the bail there is no doubt in the world that the man will appear, one way or another. It is not a question of money, because these people are not in the business of losing money. They have their own methods of ensuring the appearance of an accused.

How are you going to change the present emphasis on the professional bail bondsman? You mentioned the Scarborough couple. When you have amateurs involved, so far as the administration is concerned, you have the question of equity—whether to be fair, or have these people lose a lot of money. How are you going to switch the emphasis from the professional bail bondsman?

Mr. Mather: Mr. Chairman, the Bill is very similar to that adopted by the American Administration last year. They had found—and I think you will hear argument in support of this later—that in too many cases far too much emphasis was put upon the actual monetary value.

I have quoted people far more learned than I who support me on this point, but it is my contention that there is no need for such a condition in a great many cases. Economic conditions and the character of the accused would, I think, be given more weight than they have now on the question of bailing or releasing without bail.

(11.30 a.m.)

Mr. Woolliams: With the greatest respect, and with no wish to interrupt, I have a supplementary. Mr. Otto is absolutely right.

The discretion is there. It is something that a magistrate or judge uses. I am not being critical. I am just pointing out weaknesses that Mr. Otto has put his finger on. This discretion is something that a judge may or may not use and in common law he has all these things at his disposal in any event. The big problem, as Mr. Otto has pointed out, is first of all that there are too many cases where the police arrest people they do not need to arrest; if they were on summons they would appear. You may have 2,000 or 3,000 cases on the docket and they all appear after they are let out on bail. It is the one that does not appear who receives all the publicity and the rest of the accused suffer because of this one exception. You can never have perfection in any law. I do not want to interrupt Mr. Otto's present thought but I wish to say that I agree with him in regard to the magistrates who are trying all these cases. The high court judges only have possibly one per cent of the cases to try and they have more time, but the poor magistrates do not have much time.

They used to be called police magistrates and I have often wondered why they used the name "magistrates" because they were too close to the policemen and they became brainwashed. They dined together and they talked together and they had it all dished out. That is why the courts have now given them respectability in same if not in other fields. They now call them judges in some provinces. Let us make no mistake about it, they were called police magistrates. It was not their fault; they were thrown in the same building with the same offices and this affected the granting of bail. The police arrest these accused, not because they think they will not appear at trial, they arrest them because they can improve their investigation, they can conduct a more thorough interrogation, and a few other things that go on behind the scenes, and when a young fellow is locked up in jail he is likely to squeal a little faster than if he is on the street outside. This has been my practical experience.

Mr. Mather: Mr. Chairman, if I may I would like to briefly reply to Mr. Woolliams. I think what he has said is not a criticism of that which I propose but rather of the court system. I am trying to improve it.

Mr. Woolliams: I know you are.

Mr. Otto: Mr. Chairman, I think that Mr. Woolliams and I are arguing on the realist—you might say cynical—side but I think

with some experience you will realize, and I want Mr. Mather to understand this, that when you leave it to the discretion of the judge, as questions are left to the discretion of the minister, let us say, in the House of Commons, the fact is that it is in the discretion of the administration of the judge or, in this case, the deputy minister. When anyone leaves something to the discretion of the minister what is really meant is that it is left to the discretion of the deputy minister because the minister has no discretion and the judge has none. He has to contend with all of these people and therefore the judge will ask the prosecuting attorney what he thinks. This is the question.

I would now like to go on another tangent and I want you to follow me. Have you considered or done any research on the cost of apprehension and the likelihood of re-arrest? I have been told and I have read a great deal about the very highly computerized police systems throughout North America and I understand that very few accused who have not shown up for trial have gone free for any length of time. Even if one gets a traffic ticket these days it is computerized and therefore the arrest follows very, very quickly. I wonder, getting at the whole question of the bail system, whether you have any facts or figures to show that we do not really need a bail system at all? In other words, if the accused does not show up, under our police organization he will definitely be found within a very few months, and he will show up again.

The whole question here is the emphasis which should be put on the bail system, which was really devised for a prisoner or an accused who may have escaped and would never show up. However, the situation is much different today. Do you have any facts on the likelihood of an accused skipping bail and actually getting away with it?

Mr. Mather: I tried to present some argument that in a great many cases there is very little likelihood of a person being released without bail or skipping out. However, if I understand your remarks correctly, I wonder what you would say to this argument by Mr. Stanbury (York-Scarborough) who, in speaking of my Bill, said:

I think that the hon. member who sponsored this bill did not go as far as the hon. member for Rosedale (Mr. MacDonald) went, because as reported at page 306 of *Hansard* for May 16 last

there is a recommendation by the hon. member for Rosedale in these terms:

My recommendation, therefore, is that the provisions of the Criminal Code requiring that an accused person be taken into custody for a broad spectrum of offences should be sharply curtailed and that many offences should be exempted from the necessity of custody and therefore of bail.

Do you agree with that principle?

Mr. Otto: I would agree, Mr. Chairman and Mr. Mather, that it may be a good idea for us to first get some facts on the likelihood of, we will say, a permanent disappearance. This may possibly be a first offence and the man may go along for twelve, fifteen or twenty years without ever getting into trouble at all and it is possible that he might not be required to appear. On the other hand, it seems to me that these days with the very sophisticated methods of tracing and with the very computerized methods of transferring knowledge from city to city, we might try to get this information from people who are in this field and find out what injury would be caused if we did not have a bail system.

In other words, if the only result would be to delay the trial for two or three months then the whole question of the bail system might be examined a little more carefully. I do not know these figures, I am only recalling some of the things that I have read, but it seems to me that bail or no bail the accused is apprehended within a very short time through some other method of tracing. When you use the phrase "restriction on travel", how would you restrict his travel?

Mr. Mather: I think it would be part of the terms of release that the accused should not leave a certain area which is within the jurisdiction of that court.

Mr. Otto: In other words, you have no other method of restricting his travels, it is just a warning?

Mr. Mather: That is one of the conditions that are proposed here. Or it would be a combination of similar conditions, as cited in the Bill. In connection with your question concerning facts and figures regarding the number of people and the cost, and so on, I am very confident that people whom I think will appear before the Committee later, including Professor Friedland, will have those figures. Professor Friedland has made study of this matter. If your idea is that we

to not need a bail system, I do not want to dispute that. What I am trying to do this morning is open the door to a reform of the existing conditions.

Mr. Gilbert: First of all, Mr. Chairman, I agree with the principle set forth by Mr. Mather. Mr. Otto and Mr. Woolliams may be louding this issue and I want to set it straight. At the moment the magistrates have jurisdiction at their discretion with regard to determining bail. The problem arises in the emphasis of this discretion. At the moment they consider the monetary factor as being of prime importance in determining whether a person should be released or not. Mr. Mather is reducing this question of the amount of money that an accused has with regard to bail.

This is very important in Toronto. Toronto lawyers assume that magistrates in other jurisdictions act the same way, but in Toronto when a person is charged the magistrate looks at Crown counsel and asks him, "What is your opinion?" and Crown counsel usually says \$1,000 or \$500 bail. He determines his release according to a monetary scale because he wants to assure his re-attendance in court. Under Mr. Mather's scheme that emphasis will be taken away. I say that the magistrate must have discretion. Surely my friends Mr. Otto and Mr. Woolliams would not disagree with that. These men must have discretion because of the varying factors with regard to the charge, with regard to the character of the accused, with regard to previous convictions and so forth. So the discretion must be with the magistrate.

(11.40 a.m.)

Mr. Otto: It is now.

Mr. Gilbert: What I am saying is that the emphasis with regard to discretion has been the money factor in the past. Mr. Mather's Bill is a good one because it is taking away from this emphasis. It is looking to the character of the person and to his previous convictions and so forth. It is quite true that magistrates in the past may have done that but they did not do it exercising judicial discretion. What they did do is that they looked to the Crown counsel for direction. I think that the magistrate must exercise his judicial discretion. This Bill gives him the opportunity so to do. This is why Mr. Mather's Bill is so important. It takes away from the financial stress and looks at the other factors in determining whether the person should be released on bail or not.

I am sorry that was a long remark. Now getting on to the question.

Mr. Chairman: Yes, getting on to the question.

Mr. Gilbert: That is right. I thought I had better set forth my agreement in principle with regard to Mr. Mather's Bill. Now the thing that concerns me, Mr. Mather, is that in your opening clause 2 you state:

...other than an offence punishable by death or imprisonment for life, shall, at his appearance.....be ordered.....

One of the problems that worries me is that you get offences other than murder that are subject to imprisonment for life; things like rape and manslaughter and even robbery or treason.

I do not know what your opinion on it is but at the moment there is a certain protection afforded the accused whereby on a rape charge he applies for bail to a Supreme Court judge after commitment for trial. I hope you would want to retain this provision with regard to certain offences.

Mr. Mather: In answer to that question, yes. I do not think the Bill takes anything away from the accused, whether he has committed a capital crime or not, that he now possesses. The Bill states that the court will do certain things for...

other than an offence punishable by death or imprisonment for life

...the accused...

shall, at his appearance in court, be ordered released pending...

and so on.

unless the judge determines...

The Bill does not withdraw anything that the accused person now has no matter what his crime is. But it would not extend to the perpetrator or accused of capital crime the further moderation or the liberalization of the bail system.

Mr. Gilbert: There is one other point, Mr. Mather. At the moment—this is the practice in Toronto, although it may not be the practice elsewhere—you get certain offences such as impaired driving, which is an offence committed quite often these days. You have bail magistrates that make a circuit of the jails in Toronto. The bail magistrate releases the accused a short while after he has been charged and then he appears the following

morning before the magistrate. This practice should continue because it saves a great deal of time and a great deal of expense. I was just wondering if you were aware of that and whether you would wish this practice to continue?

Mr. Mather: I was aware of it, Mr. Chairman, and I do not think there is anything in what I propose that would change or curtail that.

Mr. Gilbert: You see, you have the word "magistrate". These are really justices of the peace that release the accused prior to his attendance before the magistrate in the morning.

Mr. Mather: This may be a good point. It certainly is not the intent of what I propose.

Mr. Gilbert: There is a difference between a justice of the peace and a magistrate. That is all at the moment, Mr. Chairman.

Mr. Otto: I have a supplementary question on what Mr. Gilbert has said. I know that Mr. Gilbert has had more experience than Mr. Stanbury and Mr. Macdonald before the bar, especially in criminal cases. But with these bail magistrates are you sure, Mr. Gilbert, that they exercise their discretion? Or do they take their direction from some prosecuting attorney who will tell them: "Well, take it easy on this fellow" or "Now, let that fellow sit there". Even though we have a procedure, how sure are you, or are you certain at all, that the bail magistrates themselves exercise any discretion whatsoever?

Mr. Gilbert: Well, they exercise their discretion, Mr. Chairman.

The Chairman: They are supposed to.

Mr. Gilbert: It is based on the information and the direction they receive from the Crown counsel. This is why I like Mr. Mather's Bill, Mr. Chairman; it takes away from the Crown counsel this direction, this almost complete direction to the magistrate.

The Chairman: You do not like the magistrate who says "bail" and the Crown says "\$1,000"? Two words.

Mr. Gilbert: That is quite right, without looking into the factors that Mr. Mather suggests. Mr. Mather says that this shall be mandatory. He says "shall, subject to".

Mr. Woolliams: "Unless".

Mr. Gilbert: "Shall...unless" there are certain...

The Chairman: It is pretty close to mandatory.

Mr. MacEwan: I think your justices of the peace in Toronto are tougher than that. I used to be one myself. I must say I exercised discretion much more leniently, I think, than perhaps in Toronto because in a smaller area Mr. Chairman, you know people better. But at three in the morning I have bailed people out. The Crown prosecutor was a deep sleeper and I did not go to him. Actually the police, if they are willing to grant it, will do it. But I can see the point in larger areas where you do not know people and where there are thousands of people and so on.

Mr. Woolliams: I have not really much. First of all, so far as the Bill is concerned, I should...

The Chairman: I think they should congratulate you on your speech on the estimates of the Minister of Justice and your particular reference to this subject matter.

Mr. Woolliams: Well, thank you. But I was going to say...

Mr. Mather: Did you say there was one law for the rich and one law for the poor or something?

Mr. Woolliams: I am quite confident that that is true. I like the fact that the Bill is here.

Mr. Mather: You like that?

Mr. Woolliams: Yes.

Mr. Mather: I am glad to hear that.

Mr. Woolliams: It gives us a chance to discuss it. But I would like to back Mr. Otto in this regard. It might be helpful to spell out what the discretion should be.

But first of all I think you have oversimplified the matter. There are summary convictions or summary offences where people are arrested and they have to apply for bail. Then there are indictable offences over which the magistrate has sole jurisdiction and an application is made for bail in those indictment offences. Then there are those indictment offences which may be categorized in which the magistrate has not absolute jurisdiction. Then you have the preliminary hearing and his committal for trial. There is bail prior to committal and bail

afterwards. It seems to be somewhat oversimplified.

This is one thing we overlooked. I think that is why Canada is superior to the United States. I am a little worried about codifying everything. Great Britain put very little emphasis on codifying the law. Their law is pretty simple in reference to the code itself. Then you go to the common law.

If you look at the authorities at pages 614 to 652 in Crankshaw's code—it is the same in the Tremear's code—you will find that common law really does exactly what Mr. Mather says. The magistrate has this discretion. When the accused has a good lawyer like my good friend sitting over there he would go before the magistrate and say: "This boy is from a good family. He has never been in trouble before. He lives in the city. There are unusual circumstances in this case which will be brought out in evidence. His family are people with little means." And the magistrate, when that is presented, will exercise, as he has in the past, and will continue to exercise, discretion. But it is still a discretion. I think the big problem is that this is a good start maybe. If you have not read about the investigation of crime by a commission in the United States that has just reported to the President, read the book entitled, *The Challenge of Crime in a Free Society*. I have just finished the book. It deals with the same problems we have in Canada. First of all, magistrates are overworked. Higher court judges are not overworked to the same degree because whereas they may have ten criminal cases, the poor magistrate may have 200, or even 500, as a result of which he has very little time to go into the facts and to exercise proper judicial discretion.

1.50 a.m.)

When we are dealing with this or any other subject under the Code, first fundamentals must deal with the reform of the Code itself. We should increase the number of magistrates or cut down their jurisdiction so they will have more time. Perhaps we could put a little heavier load on some of the other courts. Basically, they use their discretion but, unfortunately, in practice, in a big city like Toronto—to a lesser degree in the City of Calgary—where police do not know the people, discretion is exercised pretty brutally because they want them to appear at trial. They want to set bail high enough to ensure their appearance and, in some cases, to set it high enough to keep them in jail.

It is not really an application for bail at all because bail is set so high that they know they can never get out. That is what really goes on in practice in the big cities.

Therefore, all you are doing is saying "I hope" in this Bill—it is not mandatory—that magistrates will listen to these things and use their discretion. But they have that right in common law. Look at the various cases starting the top of page 642; it says the same thing. It has been laid down that the sole purpose of bail is to ensure the accused's appearance for trial and that in fixing the amount a judge should reject all other considerations from his mind, since the accused is presumed innocent until he is proven guilty. And it goes on to say that he will exercise his discretion and take into consideration these very factors which you have just said. We have that law. You know, this may be one of the weaknesses—and I mean no disrespect—in Mr. Diefenbaker's Bill of Rights. The courts have criticized it and, in some respects, they may be right, although I think they carry it much too far. They say all we really did was to codify what the law really was; that after all we had it, it was there in common law, and most judges, if they were learned enough, would recognize those rights and spell them out. Sometimes it pays to spell them out. That is the problem here. I think the reform has to go deeper, that we have to get to the root of the problem, the overworked magistrate; and we have to make certain that these magistrates are separate and apart from the police so they do not discuss problems or hear crumbs of evidence before a hearing.

One of the great problems is that police magistrates always have their offices in the police barracks; the courthouse is in the police barracks; they have breakfast, tea, coffee, lunch and supper together. They cannot help but get brainwashed, and no disrespect is intended the magistrate. I do not think I would want to be one because they have a very hard and difficult life. If I might make a recommendation, I would like to have as witnesses here one magistrate from Western Canada and one from the East to say why, in their experience, they exercise this discretion. I think you would find that they would throw quite a bit of light on some of our problems.

An hon. Member: I would like to ask a supplementary question.

Mr. Mather: Mr. Chairman, before the supplementary question is put I would like to reply to the comment made by Mr. Woolliams.

I welcome the suggestion of trying to get magistrates here to hear their point of view because I think this is what this whole thing is about. We are opening up a field which needs to be looked at. But in the meantime let me say that much as I feel for the overworked magistrates, my feeling for them is not quite as sympathetic as it is for the many poor people presently incarcerated because they cannot raise bail under the prevailing system.

Mr. Woolliams: I agree with you; my sympathy goes out to them too. But if a magistrate takes the length of time that your Bill spells out, which we already have in the common law, there would be a hundred people rotting in jail while he is deciding three cases. Now that is the trouble. Let us be practical; the fellow has only so many hours in a day and so many nerves in his body, and it is quite a hectic job. He has to set bail in the morning for 70 to 80 people; he has four of five trials before four o'clock on some very important matters; if he takes the kind of time that the high court can afford to take then he is going to leave a hundred in jail on Monday, and by the time he gets to Friday they are not going to have enough housing. Let us take a practical approach.

This is the sort of thing that goes on, as witnessed by Mr. Otto and other practising lawyers who have had experience; the poor magistrate is overworked.

Mr. Mather: Perhaps we should reform the setup for magistrates but my statement here says that two-thirds of the people in the Toronto study were unable to raise bail and were incarcerated as a result, which is truly a shocking situation. It is no argument to say that the magistrates are overworked.

Mr. Woolliams: But here is where the problem is; magistrates may have set bail much lower and the accused persons could have raised bail if they had had time to consider the circumstances. They might have set bail at \$100 instead of \$1,000 had they known all these boys and girls were from great homes, of good character, and that this was a misadventure to start with.

Mr. Otto: Or put them on their own recognition. I am sure Mr. Woolliams did not

want to lead the witness or the Committee saying that the only purpose of setting bail to ensure attendance at trial. I am sure Mr. Woolliams will also recognize that another purpose the police have is to question the accused in the environment that they like in jail—to get other information from him which has nothing at all to do with his case.

Mr. Woolliams: Of course that is acting legally but with illegal discretion.

Mr. Otto: Yes, but you must admit that this is the purpose. So there are now two quasi legal purposes; one, which is strictly legal, to ensure attendance at trial, and then the illegal purpose, which is certainly very practical so far as the police are concerned.

I have introduced evidence on a man's first offence showing that he is a worthwhile citizen and everything else, then there was whispered conversation between the Crown and the judge and bail was set at such a figure that it could not be raised. Later on we found out that they wanted to question him about some of his friends and they thought it would be much better to question him in the prison environment rather than at home. Now we have those two things to contend with.

Mr. Mather: Mr. Chairman, I would like to comment on that. I am here not to make things easier for the prosecutor but to make things fair for those people who cannot raise bail, and what I am trying to do is precisely what was done last year in the United States. If the Committee wishes, I will leave a copy of the new United States legislation with the Committee for incorporation in its records. (Exhibit C-4-1).

Mr. Woolliams: If I might just interject, we have to watch this, too. One of the great problems, and that is the information that the commission came up with, is that 90 per cent of the cases are ordinary cases but the other 10 per cent are extraordinary, and it is that 10 per cent that the police have the most trouble with. Crime has been on a tremendous increase—and Nixon made a tremendous speech on this—not because people are any worse than they were back in 1928 but because the Supreme Court of the United States has made it too difficult for a policeman to get a statement out of an accused—these gangsters—and to administer the law, as a result of which the real criminals, the gangsters are getting off scot-free and causing the rest of society a lot of trouble. I must

speech about a law for the poor and a law for the rich, and I agree with you, but still we have to be very careful. Our problem is that 10 per cent that give the police the most trouble—the gangsters, the syndicated criminals that invest in legal enterprises and illegal enterprises both in Canada and the United States, and this commission deals with this problem. They have money because they have invested their money properly, and with that money they can afford the best lawyers. They are going to be well represented and they are going to get more out of the law than the fellow who is poor because he will not be able to afford the same calibre of lawyer, or he may not have a lawyer at all.

Mr. Mather: He will not have the money to fight out anyway. The point I am trying to make is that the wealthy criminal...

Mr. Woolliams: You have my sympathy in that regard, but I think you are oversimplifying it a little.

Mr. Mather: Well, we are just starting with this and no doubt we will hear many other witnesses much more knowledgeable than myself. I am not even a member of your fraternity but I have what I think is a good idea.

The Chairman: Are there any more questions?

Mr. Pugh: Mr. Chairman, I am sorry that I had to leave for a broadcast but I could not resist it.

(12.00 noon)

I heard Mr. Otto commence his statement and I was struck right away by the validity of his question: What are you asking for that we do not have now? At that stage I believe the witness said that because of this the judge and magistrate would tend to emphasize the importance of getting a man out on bail. However, very little trouble in this regard is experienced in small towns because the magistrate or judge knows nearly everyone and the ones that he does not know too well, the police do.

I see no difficulty in a small town under the present Act, because the magistrate is going to bend over backwards to help anyone who is held for bail, whether he has any money or not; but in the larger cities, where people are not known, the only thing that can be produced before the magistrate or the judge is the actual knowledge of those on

whom he has to depend, namely, policemen and the prosecutor, who has probably a little to say on bail. This would seem to me to be the great difficulty.

The only question I have for the witness now is: Have you got over that difficulty, which is the one actually raised by Mr. Otto?

Mr. Mather: Mr. Chairman, the question is raised again: What would this proposition do that is not already done by the existing legislation? I think this was answered very well by Mr. Stanbury when he spoke in support of sending this Bill to this Committee.

Mr. Pugh: Read that into the record.

Mr. Mather: I have read it in.

Mr. Woolliams: There is one question I would like to ask before you read it. With no disrespect to Mr. Stanbury, he may be in the same position—and I think he is a very intelligent man—as a professor who has never really seen the practical approaches used in the police court. Therein lies the difference between many of my friends and Mr. Stanbury. I mean no disrespect to him. Words are beautiful, but it is when one gets down to cold practice that one can differentiate between what will work and what will not.

Mr. Mather: Mr. Chairman, I am trying to answer approximately three questions.

Mr. Pugh: I have had the answer to my question. There must have been a diversity of opinion here when I was out of the room. My only suggestion, Mr. Chairman, is that we call as witnesses those who will represent both sides. The top police association people are absolutely necessary, and also someone such as a judge. I guess we could call Mr. Woolliams as a witness, but I am thinking of somebody who has had a good deal of experience.

The Chairman: We might get one of the magistrates in Ottawa, for example.

Mr. Pugh: Yes; that would be an excellent idea; and there were others mentioned, such as the John Howard Society. This would bring out the real difficulties of the man who should be getting bail but does not get it because he does not have enough money.

Mr. Mather: That, of course, is part of my submission. But these people should be called and I believe they will be called.

Mr. Woolliams: Made the comment about Mr. Stanbury that he might be a very good

man in a professional or theoretical way. I have just one question for Mr. Woolliams: Would he agree with Mr. Diefenbaker about Mr. Stanbury's comments on this Bill, when he said:

The hon. member for York-Scarborough has made a perfect case for this bill and I feel sure he must have been speaking for the Liberal party in what he had to say. This matter should not be dropped but sent to the Justice Committee.

Mr. Woolliams: I always answer forthrightly. You must remember that Mr. Diefenbaker was one of the most outstanding defence counsels of our time. Just as a crown prosecutor acquires a certain built-in mechanism, so does a defence counsel. I remember once seeing Mr. Diefenbaker asleep between two murder trials. Somebody said, "That is going to be a pretty costly performance". What I am driving at is that he is a very highly skilled defence attorney and he may look at it just a little differently. Had he practised as a Crown prosecutor in Toronto, Montreal or Vancouver, where you get the different calibre of criminal—that 10 per cent I am talking about—they have to be handled in an entirely different way from the 90 per cent.

Mr. Mather: There is no doubt about that. Mr. Diefenbaker says that the possession of wealth by that very 10 per cent of the criminals you mention is a factor which brings about the injustice to poor people.

Mr. Woolliams: I agree with him 100 per cent.

Mr. Mather: You are not disputing what Mr. Diefenbaker says?

Mr. Woolliams: Oh, no; certainly not.

The Chairman: Have you any other questions of Mr. Mather?

Mr. Gilbert: For the information of members, I have read, as you know, that the basic premise is that bail guarantees the attendance of the accused at the trial. The figures show that three per cent do not turn up for the trial—which is very low—and in other jurisdictions, where a law similar to Mr. Mather's has been passed, there has been no increase in the rate; it has remained around the three per cent figure.

This, again, is why I appreciate Mr. Mather's bringing this forth. Magistrates feel that

by setting bail at a high figure they are deterring the accused from not attending, and yet experience has shown that when the tests as set forth by Mr. Mather are applied in other jurisdictions the accused person appears; even though he is released he still comes back.

Mr. Pugh: Is that three per cent of the actual applicants, or is its three per cent of the total amount of bail put up?

Mr. Gilbert: I really do not know.

Mr. Pugh: I can well remember, in Vancouver, long before I was a lawyer being phoned in the middle of the night and asked "Dave, for goodness' sake get 20 bucks down here right away. They have got me". You get down and you find four or five men. They have all phoned up. The \$20 goes in. They have absolutely no intention of being in court. They have been picked up because they were perhaps a little rowdy in a cafe; they had had too many drinks, or something like that. The bail was \$20 to let them out. They never come back to answer the charge. That is what happens. You never see them again. The police would laugh at the man who can't come back into court.

Mr. Gilbert: I am sure that you are referring to offences under the Liquor Control Act, which have no bearing on the criminal law.

An hon. Member: It has happened.

Mr. Pugh: But would these be included in the bail figures?

Mr. MacEwan: I like Mr. Pugh's recommendation. I have heard counsel for both sides and I am not satisfied with either of them. If you do not mind, Mr. Chairman, I would like to hear specialists on this subject in order for me to make up my mind on Mr. Mather's Bill. I think it is an important Bill and I am going to withhold my judgment until I hear further evidence.

The Chairman: Mr. Bull and Professor Friedland are specialists.

An hon. Member: Yes; that will be fine.

The Chairman: And if we get a magistrate we would then have all three facets of the problem.

If there are no more questions, and before I thank Mr. Mather, would someone move and someone second that reasonable lives

and travelling expenses be paid to Mr. Henry Bull, Q.C., who has been called to appear before this Committee on November 9, 1967, the matter of Bill C-4. Have I a mover?

Mr. Gilbert: I so move.

Mr. Forest: I second the motion.

The Chairman: Is it agreed?

Motion agreed to.

The Chairman: You do not want to discuss do you, Mr. Otto?

Mr. Otto: No.

The Chairman: I would like to introduce new Clerk of the Committee, Mr. Hugh Stewart. Mr. Despatie, who was our Clerk for two or three meetings, is also the Clerk of

the External Affairs Committee. I understand that the volume of work there has increased so heavily recently that he has been assigned almost exclusively to that Committee. We welcome Mr. Stewart as Clerk of this Committee.

• (12.10 p.m.)

In conclusion, Mr. Mather, I wish on behalf of the Committee, to thank you for your presentation, for your facility in answering questions and for your humanness in bringing this problem to the attention of this Committee and of the people of Canada generally.

Mr. Mather: Thank you, Mr. Chairman.

The Chairman: The meeting stands adjourned until Thursday at 11 o'clock.

OFFICIAL REPORT OF MINUTES
OF
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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

THURSDAY, NOVEMBER 9, 1967

RESPECTING

The subject matter of Bill C-4,
An Act concerning reform of the bail system.

WITNESS:

Mr. Henry H. Bull, Q.C., Crown Attorney, Metropolitan Toronto and
County of York, Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,

Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

HOUSE OF COMMONS,

WEDNESDAY, November 8, 1967.

Ordered,—That the name of Mr. Stafford be substituted for that of Mr. Honey on the Standing Committee on Justice and Legal Affairs.

Attest

ALISTAIR FRASER,

The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

THURSDAY, November 9, 1967.

(7)

The Standing Committee on Justice and Legal Affairs met at 11:25 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Forest, Gilbert, Stafford, Tolmie, Wahn, Whelan and Woolliams—(8).

In attendance: Mr. Henry H. Bull, Q.C., Crown Attorney, Metropolitan Toronto and County of York, Ontario; Mr. W. Bruce Affleck, Crown Attorney, Ontario County, Ontario.

The Chairman welcomed the teacher and students of a Grade 12 Commercial class at the Sir Wilfrid Laurier High School, Ottawa, who attended the meeting as observers.

The Committee agreed to continue its consideration of the subject-matter of Bill C-4 during the week of November 13th. The Chairman announced that Magistrate Glenn E. Strike, Q.C., Chief Magistrate of Ottawa will be the witness on Tuesday, November 14, 1967. Professor M. L. Friedland, Associate Professor, Faculty of Law, University of Toronto will appear on Thursday, November 16, 1967. The possible appearance of Mr. Peter K. McWilliam, Crown Attorney, Halton County, Ontario, is being considered by the Subcommittee on Agenda and Procedure.

The Chairman introduced Mr. Henry H. Bull, Q.C., Crown Attorney for Metropolitan Toronto and the County of York, and Mr. W. Bruce Affleck, Crown Attorney for Ontario County.

Mr. Bull read a prepared statement, copies of which were distributed to the members, stating his views and those of the Ontario Crown Attorneys Association on the subject-matter of Bill C-4. At the conclusion of his statement, Mr. Bull was questioned by the members for the remainder of the meeting.

On motion of Mr. Stafford, seconded by Mr. Tolmie,

Resolved,—That the report attached to Mr. Bull's statement entitled *Ontario Crown Attorneys Association, Interim Report of the Committee on Bail* be appended to this day's Minutes of Proceedings and Evidence (*see Appendix C*).

The Chairman thanked Mr. Bull and Mr. Affleck. At 1:00 p.m., the Committee adjourned until Tuesday, November 14, 1967 at 11:00 a.m. when the witness will be Magistrate Strike of Ottawa.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, November 9, 1967

The Chairman: Gentlemen, we will commence our meeting.

(11:25 a.m.)

I would like to welcome the teacher and the students from Sir Wilfrid Laurier High School who are here to hear our eminent witness discourse on the subject matter of bail, a very, very important subject.

For the benefit of the Committee, Magistrate Glenn E. Strike, Chief Magistrate of the City of Ottawa will be here next week to explain how bail is handled in the Ottawa Police Court. On Thursday we will have Professor Friedland, Associate Professor of the Faculty of Law, University of Toronto. It has also been indicated to me that Mr. Peter E. McWilliam, Crown Attorney from Halton County, is willing and available to come if we desire to call him. This will be considered by the Steering Committee.

We now have a quorum and I would like to take this opportunity of introducing to the Committee and to the teacher and students of Sir Wilfrid Laurier High School our distinguished witness, Mr. Henry H. Bull, Q.C., Crown Attorney for the County of York and Metropolitan Toronto since 1961. Mr. Bull is a native of the City of Windsor. To those of you who come from Toronto, Mr. Bull is of course extremely well known. I do not think I need go any further by way of introduction. He has with him Mr. W. Bruce Affleck, the Crown Attorney for Oshawa, Whitby and the County of Ontario. Mr. Affleck is the Chairman of the Ontario Crown Attorneys' Association. As you will recall, that Association prepared an interim report to the Committee on bail.

Without any further preliminaries, I will call upon Mr. Henry H. Bull, Q.C.

Mr. Henry H. Bull Q.C. (Crown Attorney, Toronto): Thank you very much, Mr. Chairman. May I express my appreciation to you, first of all, for that introduction, which was a bit too flattering, and my appreciation to you and to members of this Committee for the

opportunity to present my views on a matter which I consider to be of vital importance.

It may be appropriate and I hope not immodest to introduce myself with a brief reference to my experience in matters of bail in order to qualify for the submissions which are to follow.

I was first appointed to the Crown Attorneys' office for Toronto and the County of York in 1939 and served as an Assistant Crown Attorney both before and after the war until 1961 when I succeeded the late W. O. Gibson as Crown Attorney in the office which I now hold. In these capacities I have necessarily had daily contact with matters of bail, its administration and its shortcomings and abuses. Shortly after my appointment as Crown Attorney in 1961 I was asked by Professor Martin Friedland to assist in the conduct of a research exercise by students of Osgoode Hall Law School into the field of bail by making available to them material for the compilation of statistics. It was this exercise and these statistics which were the basis for his subsequent book "Detention before Trial", which was published in 1965.

In May, 1964, at the invitation of the then U.S. Attorney General, Robert Kennedy, I attended the National Conference on Bail and Criminal Justice in Washington. Professor Friedland was the only other Canadian in attendance. There I had the opportunity of a comprehensive examination of the American bail system enabling me to compare it and its problems with our own.

Later in the same year I was appointed a member of a committee set up by the Ontario Crown Attorneys' Association under the Chairmanship of Mr. Affleck, who is sitting to my right, to study the bail system in Ontario towards the end of making recommendations for changes in legislation or practice, for its improvement and to provide a basis for standardization and uniformity of procedures. Its interim report is available for this Committee, and has been attached to this submission which you have before you. It is

not marked as appendix "A". I did not know how the Chairman wished to deal with it.

In 1965 I was directed by the Attorney General for Ontario to work with the committee of the Downsview Rotary Club in connection with the Toronto Bail Project proposed by them. In this connection I went to New York and examined the Manhattan Bail Project after which the Toronto Bail Project is patterned. I saw it in operation and had discussions with those in charge of it. At present I am on the Advisory Board of the Amicus Foundation which finances and administers the Toronto Project.

• (11:30 a.m.)

I have had numerous other contacts with bail through the medium of the Conference of Commissioners on the Uniformity of Legislation, of which I am a member, in panel discussions in the Canadian Bar Association and other like bodies and less formal exchanges with other persons concerned with the subject. Recently I was invited to present a brief to the Canadian Corrections Committee under the Chairmanship of Mr. Justice Ouimet, where I was pleased to have a most sympathetic reception.

I come before you today at the request of your Chairman and the proposers of Bill C-4 and speak not only as Crown Attorney for Metropolitan Toronto and County of York but as well for the Ontario Crown Attorneys' Association who have authorized me to do so.

It is an obvious and perhaps platitudinous principle, with which there is no disagreement, that it is desirable to release on bail as large a number of accused persons as possible.

It is equally obvious that the practice in the present bail system prevalent in some places fails to achieve the optimum result in the pursuit of that purpose, either in the numbers released or in the elimination of the undue prejudice or hardship caused to some accused. It follows that there is need for reform of the present system as demonstrated by the extensive and intensive studies in Canada, England and the United States and the new legislation which has been enacted in the latter two countries.

It falls to be determined whether there is present need for legislative action in Canada and if so the extent to which it should go and the form it should take, or whether the desired reforms can better be accomplished by other means.

Although Bill C-4 purports by its title to reform the bail system and by its explanatory notes to achieve the purpose of assuring that all persons regardless of their financial status shall not needlessly be detained, it respectfully submitted that it fails to do either.

Objection to the Bill is taken on general as well as specific grounds. Among the general grounds the following may be noted:

1. *Such legislation is premature in Canada*

Several studies on the whole question of bail are in progress and are not yet concluded. The first, and most important among them, the Canadian Corrections Committee under the Chairmanship of Mr. Justice Ouimet, is still working, but is expected to make its report in the near future. I have personal knowledge that it will contain valuable recommendations with regard to bail. Secondly, the royal commission in Ontario inquiring into civil rights under the Chairmanship of former Chief Justice J. C. McRae has bail as an item of its agenda. Its report is expected within a year. Thirdly, the Toronto Bail Project, to which reference was made earlier, is just now completing the first year of its two-year trial period. It is too early, and would be unfair to the Project, to try at this stage to analyse its statistics or evaluate its experience. Various other studies and procedural programs stimulated by the current interest in bail reform are going forward throughout Canada. The Bail Reform Act, 1966, in the United States, upon which Bill C-4 is predicated, and the Criminal Justice Act, 1967 in England, have not been in force long enough to produce sufficient results for critical analysis and comparison.

In the light of the foregoing it would be most unfortunate if any legislation were enacted without the benefit of all these studies which have engaged the minds and experience of very intelligent and knowledgeable people and whose efforts might be wasted if the legislation was incompatible with their findings and recommendations.

2. *Bill C-4 is not designed to deal with the bail system in Canada*

This Bill is copied from the Bail Reform Act, 1966, in the United States with some minor variations in language and some major deletions of vital provisions. The American Act quite properly is designed to correct defects in the American system, one of the principal of which was, until the Manhattan

Bail Project made a breakthrough, that the concept of the release of an accused on his own recognizance was not universally accepted as a practice and the vast majority of accused were required to furnish security, that is, put up cash or collateral to obtain their release. The Bail Reform Act, 1966, in effect gives legislative sanction to the procedure of release on recognizance which the Manhattan Bail Project demonstrated could be followed in many cases with impunity.

In Canada since 1869 it has been the law, derived from England, that an accused, in the discretion of the Court, could be released on his own recognizance without sureties and without security. At the time Professor Fedland wrote his book, *Detention before Trial*, his statistics showed that between 40 and 50 per cent of all accused in Toronto were so released on their own recognizance; and I can say from my own investigation since that time that the number has increased substantially.

Even when an accused is required to find sureties there is, contrary to popular belief, no requirement in the law for security or collateral to be put up by the accused or by his sureties. It was not until the revision of the Criminal Code in 1954 that provision was made for a cash deposit, which provision was to the benefit of an accused who could not afford not to wish to find sureties. The evils that exist in the Canadian bail system are of the nature of administration and not a fault of the law.

To adopt in one jurisdiction the legislation of another which is designed to meet the unique problems of the latter is like using someone else's pills because the symptoms are similar—a dangerous thing to do because they may allay the symptoms without curing the cause, and may even aggravate it.

Any reformative legislation must be designed to meet the problems, factual, psychological and philosophical, which are peculiar to the jurisdiction for which it is intended.

Bill C-4 is not integrated with the existing law

The law regarding bail is contained in the Criminal Code where it belongs as part of the codified law of criminal procedure and has been considered, and by many is still considered, to be sufficiently comprehensive to achieve the purposes of this proposed legislation. Bill C-4 instead of being built into

the Code lies outside like a legislative excrescence which is a retrograde step from the desirable principle of codification. That it is not correlated with the existing law but rather is divorced from it is emphasized by the opening words and I quote from clause 2: "Notwithstanding anything in the Criminal Code..." etc. This is not just a question of tidiness of legislative drafting but a serious defect leading to insurmountable anomalies which will be seen when we come to a more detailed examination of the specific provisions of the Bill.

Among the specific objections to the Bill might be noted the following:

1. Although the Bill purports to assure that all persons shall not needlessly be detained it immediately makes an arbitrary distinction between accused based on the nature of the crime thereby excluding from the benefits of the Bill persons accused of some 22 crimes ranging from capital murder to perjury and abortion. Under the Criminal Code such accused enjoy the same right to reasonable bail as any other accused, the common criteria for all being the assuring of appearance and the interests of the public.

• (11:40 a.m.)

2. Although in the Explanatory Note the Bill purports to take cognizance of the fact that detention may serve the ends of justice and the public interest as well as assuring the appearance of the accused, as required, only the latter criterion, that is, the appearance of the accused, is carried into the provisions of the Bill.

3. There is no discretion in the court to refuse bail even where the court is convinced that the accused would not appear or in cases where there is a clear and apparent danger to the state, to individuals or to the administration of justice if the accused were released.

4. No provision is made for setting bail before appearance in court. One of the strongest criticisms of present practice is that accused are detained unnecessarily pending their first appearance in court.

5. The words "at his appearance in court" do not specify which appearance or in what court.

6. No provision is made for any variation of bail after a committal for trial when the court is in a better position to consider some of the factors which are set out in clause 3(2).

7. No provision is made for variation or modification of the conditions if the accused is unable to meet them nor for any appeal from the imposition of the conditions.

8. It is not clear what is meant by supervision in clause 3(1)(a) and whether there is an obligation on the supervisor to assure attendance of the accused.

9. No sanctions are provided for failure to observe any of the conditions either by the accused or any other person.

10. There is no definition section to define "court", "judge", "offence", "unsecured appearance bond", "registry of the court", "appearance bond", "bail bond", "solvent sureties" some of which are terms of art in the United States but not in Canada.

11. The evils of professional bondsmen not only are not excluded but are invited by clause 3(1)(c) and (d).

12. In clause 3(2) the judge is limited to taking into consideration only the factors therein set out and no others.

13. The Bill deals with "any person charged with any offence" whereas in reality it is only applicable to persons in custody.

14. Clause 4 is defective in not specifying that the time spent in custody must be in relation to the offence charged and that it is to be credited to *any prison sentence imposed*. It could not be credited in the case of a suspended sentence or monetary penalty.

15. The bill in brief does not provide for the release of any person who could not be released on the same terms under the existing law. It in brief does no more than spell out conditions which may be imposed by the court. It is probable that the court has that power now although it is seldom if ever exercised. It spells out the matters to be taken into consideration by the court which are those now considered in dealing with bail. It provides that time spent in custody shall count against sentence. This is the general practice in the courts of which I have knowledge.

To summarize it is my respectful submission that this Bill should not be enacted on the grounds that it is untimely, and does not meet the problems of bail in Canada; that if it should be enacted it should be incorporated and integrated with the provisions of the Criminal Code; that the Bill does not materially alter the existing law and practice. As presently drafted it is not capable of certain interpretations and by substantial omissions creates more problems of administration than now exist.

May I conclude by saying that none of the foregoing criticisms are intended as a reflection upon the conscientious and good intentions of the proposers of this legislation. All sincere efforts at reform of the administration of justice are commendable. It is hoped that given the time and opportunity, it can be demonstrated that the view taken by the Ontario Crown Attorneys' Association is the correct one. I quote from their interim report, the appendix to this submission:

that the provisions of the Criminal Code regarding the setting of bail before trial need no revision. Many of the difficulties real or apparent have been due to misunderstanding of them. An intelligent appreciation of the law and a strict adherence to the letter of it will substantially eliminate many of them. The result then becomes a matter of the application of principles underlying the granting of bail and an efficient and realistic maintenance of balance between the administration of justice on the one hand and the desirability of having the accused at large on the other. This we consider to be a matter of education.

All of which is respectfully submitted.

The Chairman: Thank you very much, Mr. Bull. Mr. Affleck, do you wish to add anything to what Mr. Bull has said?

Mr. Bruce Affleck (Chairman, Ontario Crown Attorneys' Association): No, I have nothing to comment to make.

The Chairman: Mr. Bull, I note that in the Interim Report of the Committee on Bail, you have attached to your statement. I would like to have the Committee's opinion whether this should be made an appendix to today's proceedings or filed as an exhibit. It would seem that the importance of it is such that it should be made an appendix and then it will be printed.

Mr. Stafford: I so move.

Mr. Tolmie: I second the motion.

Motion agreed to.

The Chairman: Mr. Bull, you will now be exposed to questions by members of the Committee. Mr. Stafford, Mr. Tolmie and Mr. Gilbert have indicated their desire to ask questions.

Mr. Stafford: Mr. Bull, this is my first question on this Committee and I have not been in

criminal practice for two years, but I see that on page 5 you have noted in your summation that the law itself is as lenient as Bill N. C-4. Is that right?

Mr. Bull: That is my assessment at the present moment.

Mr. Stafford: Could you give the Committee any idea of the total number of charges laid in metropolitan Toronto in a year.

Mr. Bull: The last figure that I looked at was for the year 1966 and in that year the new charges appearing in the Magistrates Criminal Courts and other miscellaneous courts totalled 58,057, which excludes common drunks, vagrants and minor traffic offences.

Mr. Stafford: And if one added the common drunks, vagrants and minor traffic offences to that the figure would be much greater?

Mr. Bull: About 600,000.

Mr. Stafford: About 600,000 charges?

Mr. Bull: That is taking in everything down to parking tags.

Mr. Stafford: Yes.

Mr. Bull: Everything of any criminal procedure whatsoever.

Mr. Stafford: And that is in Metropolitan Toronto?

Mr. Bull: That is right.

Mr. Stafford: Would you have any idea of the total number of charges laid including the drunks, the vagrants and traffic charges in the whole of Ontario in one year?

Mr. Bull: No, I do not have those figures.

Mr. Stafford: But the figure would be much greater than the 600,000 which is mentioned.

Mr. Bull: Yes. There have been rough estimates made that Toronto has something like 6 to 70 per cent of all criminal business in the province.

Mr. Stafford: How many people do not appear on court day in the run of one year? If you have it for the year 1966, it would help.

Mr. Bull: In the year 1966 for Metropolitan Toronto there was a total of 4,212 persons who failed to show up for trial.

Mr. Stafford: I take it then that that would probably be out of the 600,000 and not the 58,057?

Mr. Bull: That would be out of the 58,057 because in an astronomical figure like 600,000 there are always parking tags and all the summons offences that you get from minor traffic where there is no arrest. The only time there is an arrest is for a very limited number of traffic offences under the Provincial statute and a certain number of offences under the Provincial Liquor Control Act, and other than that there are no arrests under the Provincial Statutes. I should qualify the 58,000. It is the total number of new charges, it is not the total number of people arrested. Those who failed to appear were people who had been granted bail after being arrested. The 58,000 embraces those people who appeared on summons, as well as being arrested, with or without a warrant, so you do not relate the 4,212 to the 58,057. I do not have a breakdown of the 58,000 between arrests and summons.

• (11:50 a.m.)

Mr. Stafford: Do you have any reason to believe that the percentage would be much different if everyone were let out on their own recognizance?

Mr. Bull: Oh yes, there is no question about it.

Mr. Stafford: What percentage of the 58,000 would be allowed out on their own recognizance?

Mr. Bull: Of those who are allowed out on bail, half of them are allowed out on their own recognizance. At the time the Friedland book was published 43 per cent of all persons who had been arrested were permitted to leave on their own recognizance. Since then that percentage has increased. I do not know what it is now but I would guess that it is certainly between 50 and 60 per cent. Because of the impact of his book and the impact of these other studies, the present tendency of the courts is to allow people to go on their own bail. Therefore the figures for those arrested and who go on their own bail must exceed 50 per cent.

Mr. Stafford: Would the percentage of those who do not appear and are allowed out on their own recognizance be any greater in relation to the whole than those who are allowed bail? In other words, would the percentage of people who do not appear be

greater among those who post bail or among those who are out on their own recognizance?

Mr. Bull: I find it hard to answer that question categorically because I do not have the statistics.

Mr. Stafford: I am interested in knowing whether you think it is the person's own conscience or the money that is posted that ensures they come back to court when they are let out on their own recognizance or on bail?

Mr. Bull: First of all, let me qualify that. Money is not necessarily posted.

Mr. Stafford: Or property bail.

Mr. Bull: Property is not even posted.

Mr. Stafford: Or a surety by two other people.

Mr. Bull: May I explain something for the benefit of the Committee. Some of you may have fallen into what I consider to be the error that Professor Friedland fell into, as many other people have, that there is some requirement for furnishing by way of collateral either cash or property security, whatever it may be.

There are three ways of setting bail and in each of them the accused must enter into his own recognizance. I am reversing the order in which they are set out in the Criminal Code but perhaps you could put it that this is in order of preference, and it is taken out of the order of section 451, but in every case he provides his own recognizance. In one case he provides nothing else, and that is merely a promise to appear in court and if he does not appear he will be liable to an estreat of his bail, which is never done because it is a nugatory action. He is arrested, brought into court and charged with skipping bail.

The second way of setting bail, in order of importance, is that he is required to furnish one or more sureties. In that case the surety must satisfy the court and the crown attorney that it is sufficient, and in order to do so he may say, "I own a piece of property, I own Black Acre. I will acknowledge that I am indebted to Her Majesty in the sum of \$5,000, and in the event this person does not appear it will have to be paid and I will pay it." In order to show that he is worth \$5,000 he may say, "I own Black Acre, in which I have an equity of \$5,000 or more", or he may say, "I do not own any property. My name is E. P. Taylor. I live in an apartment house and

I live in Nassau. I am a responsible citizen and I am good for \$5,000. If you do not believe me, there is \$5,000 right there and you can hold it." It is an assurance of vouching for his sufficiency when he says, "I own property" or, "Hold my cash and my negotiable bonds or securities until this event occurs". However, there is no requirement that he do so, it is only to prove his sufficiency.

The third situation, which is rarely used and has only been the law since 1954, is that the court may order or allow the accused to make a deposit. This is not satisfying a surety. The accused may say, "I do not know anybody in Toronto. I come from Chicago and I do not know anybody in Toronto who would go surety for me", or he may say, "I would rather not bother my neighbours or my relatives but I have \$5,000 and I will deposit that." The court then says, "All right make a deposit", and that is a deposit of cash bail. It seldom occurs that the court actually orders a cash deposit.

I have given this information as a preface to answering your question. Mind you, there are people who go out and buy bail, release bail, pay six for five and pay 1,000 per cent interest on the money in order to get some shyster to put up bail for them. These are people who have been unable or unwilling to find someone who will vouch for them. That is all they do, vouch for them, and undertake to pay if they fail in their conditions.

Mr. Stafford: Continuing on from that, is it not difficult for an accused to be released on his own recognizance if he lives in another county or jurisdiction within the province of Ontario?

Mr. Bull: Certainly, because I think if an one on this Committee had to decide whether or not that person was likely to appear, then further that person first of all moves from the jurisdiction of the metropolitan police into another county, or into a remote part of the province, or into another province or into another country, the likelihood of his appearance as you proceed in those various steps begins to diminish and there must be a point at which the court says, "Yes, we will let that man from Ontario county, which is contiguous to York county, go on his own bail". But if he is from Kootenay, B.C., that is a horse of a different wheel base.

Mr. Stafford: But is it not correct to say that modern intercommunications have shown

ed distances and this is especially true from county to county in the province. For instance, OMSIP, social security cards, drivers' licenses, memberships in clubs and other means of identification have made it very easy to find people today when compared to what it used to be like. Is that not correct?

Mr. Bull: On a comparative basis I would not say it is very easy, I would say that it is.

Mr. Stafford: No, much easier.

Mr. Bull: I will not even say much easier. I will say that it is easier, and I think this is a suggestion that perhaps could be better answered by a police officer than by myself. Ten within the confines of a city of 2 million people if somebody decides not to come to court and on Thursday morning at ten o'clock his name is called and he does not answer, a bench warrant is issued for his arrest but where do you go to find him? He is not going to be at home or at work because he did not want to come to court. He is missing. You have the situation where, in a city of 2 million people, 3,000 policemen who should be doing other things are searching for him. It is quite true that means of communication are easier but you must remember that if he is on his own bail, and it is not made through sureties with whom you might be able to work, all you have is the address he gave you at the time he entered into the recognizance, and if he departs that address where is he? To add to that, the vast majority of people are arrested without a warrant either in the commission of the offence or immediately after the commission of the offence and if the police are on the spot in the ordinary course of their duty of patrolling the streets or checking the doors of a factory and they find a man hiding behind a parking case, it is easy and inexpensive to arrest that man and bring him before the court. If he is permitted to go on his own bail, the cost of finding him and returning him from wherever he may be is far, far in excess of what the cost of the original arrest was.

•12:00 noon)

Mr. Stafford: Was it not Professor Friedland who said that there is a positive ratio between those admitted to bail and those acquitted, and that being in jail inhibits the accused from locating his witnesses and investigating the particulars of the charge in preparing his defence?

Mr. Bull: He said that; I do not agree with it.

Mr. Stafford: For a person who cannot afford, even under legal aid, all the investigation necessary, surely being in jail would inhibit an investigation, would it not?

Mr. Bull: I agree with it in part. I agree with the statement that a man who is in jail is not able to go out as freely as a person who is out of jail. That is self-evident.

Mr. Stafford: But a person who is accused, though.

Mr. Bull: Well, he is the only person there.

Mr. Stafford: But the person accused is the only one who can really go out and investigate the case.

Mr. Bull: I suppose the most important case of a man having to find witnesses for himself would be a murder case and almost invariably bail is refused in murder cases.

From the majority of cases with which I have had experience over the years, I do not know just what witnesses he would be seeking that he could not find through the medium of his own counsel, because if there are people that he knows could give valuable and credible evidence to the court—not somebody that he is going to dig up to give a phoney alibi but who could give valuable and credible evidence to the court—he already knows about it and it is a matter of communicating that knowledge to his counsel and those agencies which could seek that witness out, even to the extent of enlisting the assistance of the local police, which we have done in many cases in Toronto. When they say to the court: "I need a witness; he is a material witness; I am in jail and cannot get him, I need help", it is granted.

Mr. Stafford: It certainly makes it much easier for defending counsel, though, to have the accused out digging up his own witnesses, or does it not?

Mr. Bull: The object of the exercise, Mr. Stafford, as I understand it, is to see that the accused gets to court; that the interests of the state are not infringed by allowing him at large; and it is not designed as a convenience for defence counsel. Nowhere in the principles of bail have I understood that bail was being granted in order to assist defence counsel in their work.

Mr. Stafford: Oh, I realize that. I just said that as an offshoot bit.

Do you feel that the Code, where it sets out somewhere that it is obstructing justice to indemnify a bondsman, is a rather ridiculous part of our law?

Mr. Bull: No.

Mr. Stafford: Why?

Mr. Bull: Because to indemnify the bondsman makes the whole bail nugatory. I have examined hundreds and hundreds of bondsmen, and one just last week where the bail was set at \$15,000 and the man came in and said: "I am prepared to go bail." I said: "What do you do?" He told me he had a business—a small confectionery store. We inquired into that and I said: "Do you know that happens if he does not show?" He said: "I am not worried about that." I said: "How much of this bail are you putting up?" He said: "\$10,000." I said: "Why are you not worried?" He said: "Well, he (the accused) has already given me \$5,000 and he has promised me he will give me the other \$5,000 the day he gets out." So that the bondsman would have received his indemnification, \$10,000, on the day the accused got out of jail and there would be no bail at all.

That is what indemnification means. This is different from consideration. Section 119 talks about indemnifying, that is saving the bondsman harmless in whole or in part. In other words, the bondsman is not going to suffer by being a bondsman. This does not mean an appropriate charge for the rental of the money or for the services provided in being a bondsman. If a person is going to put up cash bail, he does not necessarily have \$5,000 in his pocket. He borrows it from a friend or he may borrow it from the bank at $7\frac{1}{2}$ per cent. Now, the $7\frac{1}{2}$ per cent that he pays to the bank is interest for the money; it is consideration for the use of it. It is not indemnification.

Mr. Stafford: But why not permit the accused to get, say, insurance from a licensed bondsman who could insure the Crown's cost of apprehension?

Mr. Bull: Because in such a situation, just as in the case of casualty insurance or life insurance, a fidelity bond is covered by actuarial protection just as much as in any other field; and again, the bail does not mean much. Insurance companies are protected from loss by their actuaries. Another thing is

that they do not have any personal interest in the accused being there. And a third thing, as is the case in the United States, that even with government control, it then becomes the insurance company or the fidelity company that decides whether an accused should be at large instead of the courts. They have the overriding say as to whether they are going to give the insurance, just as in insurance. A man may have an accident and then he finds himself uninsurable; then has to proceed on an assigned risk basis. That is the evil of the professional bondsman, the principal evil, which has been found in the United States and which was discussed in great detail at the national conference in 1964, where they had professional bondsmen there to speak for themselves.

Mr. Stafford: But you are looking at a different aspect of it from what I was thinking about because even talking about automobile insurance which you mentioned, insurance never makes a driver any better, any worse, does it? Is not the accused just liable to turn up?

Mr. Bull: No, that is the point. I think you have made your own point there—that insurance with a stranger company does not make the accused liable to turn up any more than if he were allowed to go on his own bail. It has no meaning to him, whereas Aunt Susie is going to lose her home or a friend is going to lose his business or is going to be hurt by this, there is some psychological effect, if nothing else, on the accused. Now, mind you, if a person is going to skip bail he is going to skip anyway, but there are some people who will be deterred from skipping because they do not want their mother to lose the family homestead.

Mr. Stafford: Here are a couple cases which took place when I was in court in Thomas this summer. There were four fellows from Quebec working in tobacco in Elgin County. While I was on another case over there, I noticed that they appeared and that the charge was I think, unlawful possession by one of them of a small transistor radio. I think they had been in jail. One of the boys was a little angry in court because he said he had already been in jail I think, for a week or so. No interpreter could be found so the case was adjourned for another week. And here we have, for a comparatively minor offence, four young people detained, kept in jail, shipped from Montreal. Do you feel that our bail

system or administration is fair when things like that can happen?

Mr. Bull: I think the system is fair. I do not know that the application of the system in a particular instance is necessarily fair.

Mr. Stafford: But you do agree, do you not, that in smaller areas, for instance where a magistrate may only have court once a week or once every two weeks, applications like this are even more frequent. People are kept in jail and on many occasions they are found not guilty.

Mr. Bull: I agree. I agree that it presents problems of administration in those sparsely settled parts of the country where courts do not sit frequently. Where a court is sitting every day or in Toronto where we have bail services available, as far as we are able to provide them, 24 hours a day, certainly there is a great likelihood of some undue prejudice or hardship upon an accused. This is a matter of administration, not a matter of law.

Mr. Stafford: But you have mentioned the Criminal Code. Also under the Summary Convictions Act of Ontario—I am not too familiar with it now,—but around section 24 does it not say something to the effect that an officer in charge may admit a person to bail himself?

Mr. Bull: That is correct, for provincial...

Mr. Stafford: For provincial offences. But there are numerous occasions when it is not the case, is it?

Mr. Bull: Well, I cannot answer that.

Mr. Stafford: In your experience, do you find that under dozens of offences under the Highway Traffic Act of Ontario, such as making false statements, failing to notify of change of address, careless driving, or racing on a highway, many people are arrested that the officers could ordinarily let out?

Mr. Bull: And do.

Mr. Stafford: There seems to be no way of discriminating; or maybe it is discrimination by the officer. But some are arrested and others are not for exactly the same offence under very similar conditions.

(12:10 p.m.)

Mr. Bull: I do not accept the word "discrimination".

Mr. Stafford: No. I meant...

Mr. Bull: There is distinction and he exercises a discretion in the particular circumstances. In all of these things there is a discretion whether to charge at all. An officer may not even lay a charge. He may forget the offence. If he does, he may proceed by way of summons, he may arrest, he may apply for a warrant and the man may be released on bail by the police officer in the station, or he may be released by the justice of the peace who is frequently available at the station. All of these things are discretionary matters.

Mr. Stafford: Do you not feel that something could be done about the administration to clear up points like this much more effectively?

Mr. Bull: I could not agree with you more and that is the whole point of my brief, that it can be done by an improvement of administration. I think each of us in the Ontario Crown Attorneys Association is aware in a very lively way of the need for this, and efforts towards that end are being made in each jurisdiction. We are autonomous in our own county at the moment, and we have the endorsement and the guidance of the Attorney General's Department in our own province where we are doing the utmost to improve the administration by instruction to justices of the peace, the police, and our own staff memoranda as to principles and giving guidance in exercising the discretions which lie within us. We hope all these things will achieve the optimum result. We are not going to achieve it in every case and we will not achieve perfection but that is what we are working toward. It is administration. We believe that when we have tidied up the administrative area in our own house and when people understand what the law now says about bail there will be no need for a major amendment. There may be some collateral matters that need some tidying up to give effect to the administrative improvements.

Mr. Stafford: May I just mention a murder trial that I once had, the Witherow case. There were three trials, two hung juries, and finally he was found not guilty and released in Toronto after having spent almost a year in jail. Do you not think, even in a case like that of non-capital murder, that something could be done?

Mr. Bull: I think that it is preferable that that man was ultimately found not guilty and entirely freed from further prosecution,

arrest or stigma of the charge of murder than that he be a fugitive accused murderer for the rest of his life.

Mr. Stafford: I know we should not discuss cases coming up before the courts but even the Horsburgh case—I understand he spent 104 days in jail—if he is found not guilty, will be another indication that for some reason or other the administration of justice is not perfect.

Mr. Bull: It certainly is not perfect but it is impossible for the jury to give a verdict at the time you are setting bail, or to anticipate that he is going to be acquitted.

The Chairman: Mr. Tolmie, Mr. Gilbert and Mr. Forest are next.

Mr. Tolmie: Mr. Bull, I just have a couple of short questions. You seem to stress the fact that abuse of administration is the main concern and I agree. I found that it is most difficult to get bail on the week-ends and holidays. Have you any suggestion how this could be made more efficient as far as justices of the peace are concerned?

Mr. Bull: I do not know that I have a panacea for it but I think that an extension of the powers of the police to grant bail in certain lesser offences, what they call 'jail-house bail', is a partial answer to it. I think, where it is feasible to do so, the availability of justices of the peace can be extended. Mind you, I do not agree with the thought that many people seem to have, that JP's are the handmaidens of the accused to be Johnny-on-the-spot immediately that an accused is arrested, but I think, for instance, in a large jurisdiction such as Toronto, we are moving in the usual ponderous fashion that public affairs usually do, towards centralization of courts, central lock-ups, a 24 hour service for bail, remands, examinations, legal aid and all the other aspects of the administration of justice—sitting around the clock, in other words. We are trying to do that now. We have two justices of the peace who are peripatetic throughout the night. There are over 30 lock-ups in Toronto and they cannot be at 30 lock-ups all at the same time or come back again 10 minutes after they have left. The JP is there to deal with the prisoners that are there at that time and then they move to another lock-up. There is a limit to what you can provide. As I say, I do not subscribe to the saying that there should be a JP sitting on his hands all night long in

every lock-up in the event that some prisoner might be brought into that lock-up who is entitled to apply for bail and receive it. There is no doubt that there are people held longer than they should be. Although we are trying to find ways and means to keep them to a minimum, we cannot eliminate it.

Mr. Tolmie: You did mention perhaps greater participation by the police themselves.

Mr. Bull: I think there is room for that. There is another area which was dealt with by uniformity commissioners at their last meeting in Newfoundland and a recommendation went forward to the Department of Justice. From the way it was received by the representatives of the Department I take it that it will form part of the Criminal Code amendment bill. It was to clarify that when the police had arrested a person, let us say for impaired driving and taken him to the lock-up; they could release him when he is in a fit state to be released—he may be so drunk that he should not be allowed to go out the front door—after having completed the necessary investigation and after having told him that they would proceed by summons. Now that is one area where we have had difficulty and one in which the greatest complaints are. We do not get complaints from the professional criminal who is kept until 10 o'clock the next morning to go before the magistrate. We get it from the otherwise responsible respectable citizen who has had one over eight and is picked up for impaired driving. He screams: "I want to get out". The machinery is not there to let him out. The police have held him because on the one hand they felt that to release him would be a reflection on their evidence that he was too drunk to drive—too impaired, and on the other hand they felt that the provision of the Criminal Code, which says that the accused shall be brought before a justice of the peace within 24 hours, was mandatory and that they must bring him before a JP. To clarify that and have recommended an amendment which would not make it mandatory that he be brought before the JP but that he must not be held longer than 24 hours, which is the original intent. That is one area.

Another area for amendment, and this is outside the Criminal Code, is the Identification of Criminals Act which provides for photographing and fingerprinting of all persons charged with an indictable offence who are in legal custody. You cannot photograph

fingerprint a person who is brought in by summons. Now if the Identification of Criminals Act, which provides for the same necessary procedures by the police in law enforcement duties, were extended, in appropriate cases, to summons cases, they would not have to arrest so many people. They would arrest people today just so they can take them into the fingerprinting bureau and take their prints taken when, for any other reason, they would proceed by summons; and after having arrested them the police are left under the impression, despite any notice that has been given to them, that if they were to release the accused they might be sued for a false arrest if they did not issue their original arrest to the point where a judicial officer released the accused. If you put those two things together you would materially reduce the number of people who are either arrested in the first place or who are detained to appear before the courts.

Mr. Tolmie: You mentioned the evils of professional bondsmen. Who are these people and what are the actual evils involved?

Mr. Bull: You ask who they are.

Mr. Tolmie: What type of individuals?

Mr. Bull: Some of them are solicitors, members of the Bar. We in the Ontario Law Society, of which I am a benchler, found it necessary to issue an opinion in the Professional Conduct Committee inveighing against them, which was published in the notes. They range from there to criminals, the six for five type; who charge \$6 for \$5. Whether it be for one day, one week, or two weeks one could calculate just what the rate of interest would be on that racket. The exorbitant battering on the unfortunate few by these people is the principal reason. The professional bondsman, it is also under the table, we are not going to find out about very easily. He is being indemnified. He is in breach of section 119, on getting his money back. He gets the material and he says: "I will put up your bail, but I want your right eye."

Hon. Member: A mortgage on a house.

Mr. Bull: That is right. He gets collateral security and he is completely indemnified. Superficially, he puts it up. Mind you, he would be putting it up by handing the cash to the accused and saying: "Here, go and make a deposit." This is usually where they are charged, not so much in property bail. Proper-

ty bail is usually obtained from a friend, neighbour, or relative who will say: "I will go surety for you, and I can justify myself because I own this property." But he does not actually put it up. He does not mortgage his property when he says that although all people in common terminology talk about it as being property bail. The professional bondsman seldom comes forward and says, "I own Black Acre," because he is going to have to come before a Justice of the Peace or a Crown Attorney and say: "Look, I am going bail." I would say: "Wait a minute, buster, you are already bail for 10 other people." You know the "Lefty Thomases" and the people who are in the rackets—and this is a racket. This is part of organized crime.

We stumbled over this in the case of Klegerman who was handling some \$4 million worth of "hot" stolen jewellery from all over the world. He was using some of that money for the six-for-five racket. He was putting this up in bail rackets. This is part of organized crime in the United States, Switzerland, France and Belgium.

Mr. Tolmie: You mentioned the Toronto Bail Project. What exactly is that?

Mr. Bull: The Toronto Bail Project is copied from the Manhattan Bail Project. Again, unfortunately, the enthusiasm of the Downsview Rotary Club carried them into a field of some error.

To go back, the Manhattan Bail Project was to provide a procedure for release on the accused's own recognizance, which was not acceptable in New York at all; it was never done. The accused actually had to put up cash or have a bondsman put it up, for which he paid. He actually had to put his hand in his pocket and produce money in order to get out on bail. The Vera Foundation showed that the law did permit ROR—release on his own recognizance—and they undertook to provide a service of interrogation of the accused, before he went to court, on his stake in the community—his residence, his connections, his work, his past record; all the things which would make him likely to show in court—and they scored it with a certain points score which they developed by trial and error: three points for having worked for 10 years, 2 points for having worked for 5 years, one point for having worked for one year and zero for anything less than that. They add this up. It is almost an informal data processing. They verify this. They go from the cells, where they have

made this inquiry, to the telephone and call the landlord, the neighbour and the employer and check these things out. If they do not check out, he is "out" so far as they are concerned. If they do check out then they report this to the court. If he gets a score of 16 verified he is fit to supply his own bail and it is ROR; but it is still within the discretion of the court whether that is done.

As I say, that was done because there had not been any ROR before. The Toronto Bail Project, the product of the Downsview Rotary Club, lifted the Manhattan Bail Project holus-bolus, gave it the name "Toronto Bail Project" and put it to the Attorney General of Ontario. He said: "We will give it a try. We are not satisfied that this is necessary; we do not know how valuable it will be in this jurisdiction, but we will try it." We are having our annual review of it next Tuesday in Toronto. It has not been nearly on the scale of New York. This is not just because of numbers, but because it was found to be not as necessary.

It has value in that it verifies the same information which we already obtain through other means when the police make the arrest. They make an inquiry into the man's background, where he lives and, what he does; they must necessarily do that. That is supplemented by the inquiries that a magistrate or a crown attorney may make. He asks: "Where do you live? Do you support a wife?" The fellow says: "Oh, yes, I am married". The Crown Attorney happens to know that there are warrants out for him for non-support. He says: "You are not working at it." These bits of information are now to some measure verified by the Toronto Bail Project and to that extent it is valuable.

Mr. Tolmie: Thank you very much.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Mr. Chairman, my first question of Mr. Bull is really supplementary to Mr. Stafford's.

You told us that roughly 4,200 failed to answer. What is the percentage who skip bail?

Mr. Bull: Because I do not have the figures on how many are actually released on bail, as opposed to those who are detained in custody, I cannot answer on what the proportion would be. It would not be more than the between 1 or 2 per cent that Friedland talks about in his book. I have read his statis-

tics—the ones we worked on together, in any way—and I find that they are a little dangerous to follow in that they were drawn from cold documents some years after the person for examination took place and none of the accused involved was questioned. They were taken from the blue information forms which are found in the court record, where you have a small notation "No bail". That is somewhat meaningless to a person who has not worked in a court as, unfortunately, Professor Friedland has not.

Mr. Gilbert: Would this percentage increase if we were to incorporate the provisions of Bill No. C-4?

Mr. Bull: Let me say, first of all, that Bill No. C-4 does not grant bail to anyone who is not entitled to get it today. It is whether or not the court grants it. Bill No. C-4 does not extend; as a matter of fact it limits. It restricts the provisions for a person put up his own bail: it does not extend them.

With that in mind, I would say that in Metro Toronto...

Mr. Gilbert: Let us assume that it does not extend it, Mr. Bull.

Mr. Bull: I cannot assume that because the provisions just do not do so. They do not provide any provision for a person put up his own bail which is not in the Criminal Code right now. As a matter of fact it restricts. It does not extend the provisions...

Mr. Gilbert: If you are referring to the words, "notwithstanding anything in the act..."

Mr. Bull: I am talking about what is in the Criminal Code section 451, where it is stated:

(iii) upon the accused entering into his own recognizance in Form 28 before a justice or any other justice in such amount as he or that justice directs without deposit;

That is just as wide a provision for a person's own bail as it is possible to make. And in summary conviction matters the accused may be permitted to be at large without a recognizance.

• (12.30 p.m.)

Mr. Gilbert: Am I right in assuming that section 451 with regard to the granting of

ail is under part 15 and it is really incidental to a preliminary inquiry?

Mr. Bull: And it is applicable to parts 6 and 17.

Mr. Gilbert: That is right but it is not a consequence, you know, of arrest. It is incidental.

Mr. Bull: It is incidental, too, but as far as practice is concerned it is a consequence of arrest. That is the point that is made by Mr. McWilliams in his article in the Criminal Law Quarterly. I agree with him that it could be more appropriate to relate it to arrest rather than to a preliminary inquiry. It from a practical point of view it certainly is a consequence of his arrest.

Mr. Gilbert: Well, is it discretionary or is it mandatory under section 451?

Mr. Bull: Discretionary.

Mr. Gilbert: Discretionary.

Mr. Bull: Is it mandatory under Bill C-4?

Mr. Gilbert: No, it is not; you are quite right. They tell me that in the United States law in many jurisdictions it is mandatory.

Mr. Bull: Under United States law bail is a constitutional right which is mandatory. There is no discretion in the court at all to refuse it. There is quite a different situation in the United States. That is not the law of Canada. The law of Canada as to bail contained in the Bill of Rights does not say that at all. There is no absolute right to bail in Canada.

Mr. Gilbert: We have taken away an application under habeas corpus with regard to bail.

Mr. Bull: That is right, and substituted provisions for discretionary use and appeals.

Mr. Gilbert: What appeal, if any, has an accused when he is denied bail?

Mr. Bull: He may appeal to a Supreme Court judge.

Mr. Gilbert: How often would you say that is used, Mr. Bull?

Mr. Bull: Quite frequently.

Mr. Gilbert: Quite frequently?

Mr. Bull: Yes, if he thinks he has any grounds for his appeal. Most of those who

are refused bail realize that they would not get it in any event because it is quite proper that they have been refused the bail.

Mr. Gilbert: I think it is fair to say that the test with regard to determining bail is the assurance of the accused at trial subject, they tell me, to three questions; the nature of the offence, the probability of conviction and the severity of the penalty. Is that the test?

Mr. Bull: Not entirely, no.

Mr. Gilbert: What would you say the test is then?

Mr. Bull: I would say in broad terms it is the assurance that the accused will appear for trial and that if released there will be no danger to the state or to the public interest. When I say the "state" I am saying it in its broadest terms. There are individuals, for instance, the man who is charged with attempted murder and has professed his intention to finish the job if he gets the opportunity. That has nothing to do with his appearance at all. He says: I will be back for trial as soon as I finish the job. Or he may have just threatened. It may be a charge of threatening to murder. We have such a case coming before the court on Monday of a man who threatened to murder a magistrate, a psychiatrist, the Superintendent of the Mimico Reformatory and me. He is in custody.

Mr. Gilbert: That is where he should be.

Mr. Bull: Thank you.

Mr. Gilbert: Is it the practice of magistrates, also sometimes at the direction of Crown counsel, to impose a high bail so that the accused cannot raise it?

Mr. Bull: It probably has been done and that is an abuse; there is no question about that at all. It is one of the things we are trying to eradicate by educating magistrates that that is wrong. The Magistrates Associations are meeting and discussing these things. That is patently wrong. Crown attorneys have been instructed against this sort of thing and Justices of the Peace are continually instructed against it.

Mr. Gilbert: Well, Mr. Bull, referring to Toronto cases as you said 65 to 70 per cent of all cases come before Toronto magistrates. The usual procedure when the accused comes before the court is that the magistrate looks to the Crown counsel and the Crown counsel says: \$1,000 property or \$500 cash without

paying too much attention to the other facts that may be concerned, the facts of his family background and employment, and so forth. This has been my experience in practising law.

Mr. Bull: It has been mine, too.

Mr. Gilbert: I am not criticizing Crown counsel for it because when he comes up for the first time in the majority of cases he has not counsel. What would you recommend to help clear up that problem?

Mr. Bull: First of all the situation, I think, has improved. Perhaps your duties here have denied you the privilege of seeing legal aid in action with duty counsel, where all accused in custody whether they are indigent or affluent have duty counsel available to advise them of their rights and to make the application for bail on their behalf, and to inform the court of their circumstances, their stake in the community and make the application. That may account for the fact that we have a backlog at the end of October of close to 4,000 cases in the Magistrate's Court of Toronto waiting to be tried. These are cases on remand.

Now, this is in part caused by more time and more care being taken in assessing bail applications. The other thing is more courts, more magistrates, more justices of the peace, more Crown attorneys and more pay for all of them.

Mr. Gilbert: I like that last suggestion.

Mr. Bull: We should have had it first. It is ever present in my mind.

Mr. Gilbert: I notice that in the Manhattan Project that sometimes probation officers and other court officials gather this data that is now taken.

Mr. Bull: Originally the data was gathered by law students in New York. After each trial period it was taken over when it was accepted by the powers that be in New York as being a valuable procedure. It was taken over by the probation services. There was not any continuity with law students and also the probation officers were better qualified as interrogators. Law students are sort of dewey-eyed and not quite as hard-bitten as court officials who have been around, and it was an easy thing for the accused sometimes to pull the wool over their eyes. So now it is under the probation services who conduct the investigation and do the verification.

Mr. Gilbert: I was just wondering whether duty counsel in Toronto courts could assume part of this responsibility. You have mentioned the Rotary Club and there is a formula that seems to apply and I am just wondering whether duty counsel could assume this?

Mr. Bull: What we have done in Toronto is a modification since the inception of the Toronto Bail Project. It started out with inquiries being made by law students. We are going to lose those law students when Osgoode Hall moves.

The Chairman: Mr. Whelan wants to ask questions too.

Mr. Gilbert: I am sorry, I have just one short question to ask.

Mr. Bull: It is being done now by police in their original history sheet and that data is then passed over to trial bail project for verifications. The inquiries are made by police officers.

Mr. Gilbert: You pointed out that there is no absolute requirement in the Code to put up cash or property—

Mr. Bull: Subject to that one section about the cash deposit.

Mr. Gilbert: Yes, but in actual practice that is what is required; in most cases cash or property is required to be transferred.

Mr. Bull: Property never is.

Mr. Gilbert: It is not transferred but at least it is deposited.

Mr. Bull: No. Are you relying on Mr. McWilliams' article?

Mr. Gilbert: I have read Mr. McWilliams.

Mr. Bull: Yes, well he is wrong.

Mr. Gilbert: He is wrong?

Mr. Bull: The title deeds are not deposited in Toronto. He is patently wrong on that. They are produced for inspection by either the Crown attorney or the Justice of the Peace and they are returned to him.

He said he had a bulky file there with title deeds in it and could not get them sorted out. I have no doubt he could not get them sorted out; I think he is in a hell of a mess.

Mr. Gilbert: This must be the practice in Halton County.

(12:40 p.m.)

Mr. Bull: Well, apparently it is. I had better check and find out what he is doing. He said it is the practice in Toronto and I can say flatly and categorically it is not.

Mr. Gilbert: I think you are right from my experience also.

Mr. Bull: I do not think you ever left a leed in a J.P.'s office.

Mr. Gilbert: You are right. I understand that they do not have this practice in England.

Mr. Bull: No, that is right. They do not even go to the extent that we do in examining the sureties but the average Englishman seems to have a little higher regard for the law, a little more respect for the law, than the average surety of Canada has. It is unfortunate that I have to say so, but it is true.

Mr. Gilbert: Mr. Chairman I will yield to the next questioner.

Mr. Forest: Mr. Chairman I agree entirely with our distinguished guest that Bill No. C-4 does not change anything that does not presently exist or that might create problems. You mention in your brief that there is need for reform of the present system and that extensive studies have taken place in Canada, the United Kingdom and in the United States concerning reforms and that new legislation has been passed. Would you care to comment generally on the reforms which you would propose to the bail system in Canada other than improvement in the administration section of it?

Mr. Bull: There are certain reforms of the system which might require some legislative action on the fringes of it. A beefing-up of the provisions for skipping bail, that is, putting teeth into the skipping bail section so that there is a real deterrent against people skipping bail. If you did that you would have some threat over them and a lot more people would go on their own bail or on some lesser type of sufficient surety than they presently have.

There is another matter I would like to discuss and I do not know whether this could be made legislation because it is a discretionary matter, but this concerns what county court judges are doing with the estreat of bail. As it now stands when there has been a default and bail is noted for estreat the

bondsman can appear before a county court judge—certainly this is the case in my jurisdiction—and by entering a plea for relief from estreat be excused the whole thing. The bail may be set at \$10,000 but they do not lose the family homestead. The judge says, "How much did it cost to bring the man back from British Columbia?" and if it cost \$500 that will be the estreat of the bail. That is hardly a penalty; all they have done is pay his railway fare. Nothing has been done to put some beef into those punitive provisions in order to make bail effective when it is granted.

There is provision in the bill for the cancellation of bail although there is presently no provision for this. If a person is granted bail and he does something which practically disentitles him to being at large but it is not the commission of another offence he can be rendered by his sureties, the man who enters bail can say, "I am afraid this fellow is going to skip", but if we find him standing at the international airport with a one-way ticket for Australia there is nothing you can do about it. It might even be Brazil, with which we have no extradition treaty. There is not sufficient provision for making the bail which is granted really effective. In many cases it is a matter of going through the motions and, as Mr. Gilbert says, the magistrate turns to the crown attorney and says, "What about bail?" The crown may say, "One, two, three thousand." I could pick a figure out of the air, as we have been doing, which is not good. It is meaningless. It is just a formula, a ritual, and it should be approached realistically. This is procedure now. The crown attorneys have the opportunity to find out what should be the correct bail. Perhaps in certain areas there should not be as much bail granted. Perhaps more people should be kept in custody, more professional criminals who are going to go out and either finish the crime which they were committing, destroy the evidence that would prove their guilt, commit more crime to lay up store in heaven for themselves when they get out, pay their counsel or for any other reason or because that is their way of life. He does not have a job and he goes out. What is he going to do? He has to have bread and butter while he is waiting for his trial, so he steals. It makes the work of the law enforcement agencies useless and what we are trying to do is protect the public from the predatory actions of anti-social persons. We should be more realistic about this and, as I mentioned, tidy

up the fringe matters such as releasing a man on summons after he has been arrested, more use of the summons procedure and a broadening of the Identification of Criminals Act. These are the things I am talking about, the necessity for reform. First of all, you must consider whether a person should have bail or not and that is a matter of education. Everybody is entitled to apply for it; everybody is entitled to have it except for just cause. That is the language of the Bill of Rights. If you can establish just cause why a person should not have it then there should be no bail but having said there is no just cause why he should not have bail then we should set a bail which is realistic in the circumstances and which will assure his attendance in court. We are then not dealing with danger to the public because if there is danger to the public he should not have bail at all. If you have eliminated the danger to the public interest, then the only reason for bail is to ensure his attendance. Bail should be measured by the criterion and by no other because, if a man is going to skip, \$5,000 or \$50,000 will not hold him any more than \$500. We should eliminate bails of \$50,000 and \$100,000 except perhaps in very rare circumstances such as cash bail in the cases of extradition, where you do not have any tie and the man is already a fugitive.

Mr. Whelan: I have a couple of questions, Mr. Chairman. When Mr. Bull was answering Mr. Stafford he mentioned the law was all right but the officials were, I gathered, enforcing the law of exercising the rights of the law incorrectly on these people. Would you care to say who these officials are?

Mr. Bull: I will start out by saying, *mea culpa, mea culpa, mea maxima culpa*.

Mr. Whelan: Would you explain that?

Mr. Bull: I am guilty myself. I think the officials include anybody who has anything to do with bail; crown attorneys, police, justices of the peace, magistrates and judges. Since the year "dot" it has been treated too much as a perfunctory procedure or ritual and without enough people giving it sufficient thought. Although I do not agree with Martin Friedman on many of the points that he makes—in fact, I find myself violently in conflict—and I have expressed myself to this effect on public platforms on which we both appeared at the same time, but I must take my hat off to him for having brought out in a very forceful way the fact

that we are far from perfect in our administration of bail. It has stirred Mr. Cassells, Mr. Affleck, Mr. Mather, myself and many, many others to turn their minds to this matter and give it some thought.

Mr. Whelan: The other question I have concerns what you say on page 6:

Bill C-4 instead of being built into the Code lies outside like a legislative excrescence which is a retrograde step...

Do you mean that...

Mr. Bull: When you break down criminal procedure into separate statutes which start out as this one does—notwithstanding something in some other statute—it is bound to create bitter confusion and make it harder for an ordinary police officer in a lock-up to interpret the law. If you hand him the Criminal Code although he is not a lawyer he can struggle through it and he can find a certain provision between the two covers. It is code. However, in England you may have to refer to the Criminal Law Act, the Criminal Justice Act, the Children and Young Persons Offenders Act, the Indictable Offences Act and the Summary Act, which is a vast welter of legislative bumph.

Mr. Whelan: You mean that Bill No. C-4 is legislative bunk?

Mr. Bull: I did not say "bunk"—I said "bumpf" B-U-M-P-F.

Mr. Whelan: I thought you said "bunk".

• (12:50 p.m.)

Mr. Bull: No, not bunk—bumpf. I do not know how that translates.

Mr. Whelan: Thank you, Mr. Chairman.

Mr. Stafford: In the total of 4,212 instances where I think you said that people did not show up for bail in Metropolitan Toronto in the year 1966, how many were easily located by the police within the course of a few days or how many turned up after that stating that they just missed the day of the court?

Mr. Bull: No survey has been made of this and I do not have any statistics. At the moment we have at the county level—that is, General Sessions of the Peace and County Court Judges' Criminal Court—in Toronto out of a total of 300 cases pending at the moment, we have been unable to locate through all efforts. These are not people who

It did not turn up today and we can find tomorrow; these are people who have been committed for trial. As a matter of fact, 300 is not the proper figure. It would be better to say 200 because 100 of the 300 are new cases which will come up in the next session. We have 200 cases pending and 45 of them are lost completely. We do not know where they are.

Mr. Stafford: But the 45—to be fair to the prisoners, too—would be carried over from other years. They did not all happen in the last few weeks.

Mr. Bull: No, that is true. You ask, how long is it? Some of these are old dogs we have had for a long time. In other words, the gone our changes of getting people on a search warrant are rather slim. It is interesting and we do not know the results of these but I had them, in anticipation of this meeting, find out how many of those who were granted their own bail were lost. I do not know how many were granted their own bail in the month of October, but we lost 168 in the last two weeks of September we lost 168.

Mr. Stafford: Out of how many?

Mr. Bull: As I said, I cannot tell you that. I am just saying that the police are now looking for 271 people in addition to arresting the people who are committing offences. They have already arrested those persons once and they are now going out—not only the Metro police but the police in St. Thomas and the police in Victoria, British Columbia and Halifax, Nova Scotia—because it has gone out in the teletype—“We want this body.” Every police officer in Canada is now taking time to look for those 271 people.

Mr. Stafford: Some of them—let us say prostitutes—the police would be just as glad to see go anyway. These are people you really want? Is that correct?

Mr. Bull: I cannot answer that. They are people who just did not show up for court. I wanted them—the magistrate wanted them back. If he had thought it was just as well they did not show up he would have said so.

Mr. Stafford: I know that in my part of the country—in London, St. Thomas and other places—sometimes in these cases of someone taking off the avails or a prostitute if they appear you do not lose too much sleep over it.

Mr. Bull: Perhaps that is not an offence in Elgin county. Do not print that.

Mr. Stafford: I have just one more question I would like to ask you. It has something to do with what you said about those arrested. To sum this up a little better, is it correct that under section 463 even those who are committed for trial—applying that section of the Criminal Code and with what you said—for offences other than those punishable by death as capital murder—those people who are waiting trial under sections 50 to 53 of the Criminal Code having to do with assisting a state at war or intimidating Parliament, acts of sabotage or acts of mutiny and non-capital murder—could be released on his own recognizance without surety and without security as you mentioned on page 5?

Mr. Bull: That is correct.

Mr. Stafford: Is that correct?

Mr. Bull: Under the Criminal Code that is correct.

Mr. Stafford: Under the Criminal Code?

Mr. Bull: Yes. It is not under Bill C-4 but it is under the Criminal Code.

Mr. Stafford: The point I am getting at is this: with your great experience that is correct, is it not?

Mr. Bull: Yes. The power is there to let a person go on his own bail on a charge of capital murder but I do not think it would be a wise practice.

Mr. Stafford: No, but it has happened.

Mr. Bull: I will not say it has in the case of murder. All murder was capital until recently and none of it may be after today.

An hon. Member: Print that fast.

Mr. Stafford: After they are committed for trial, though, there are those exceptions in section 463.

Mr. Bull: The exceptions there are merely exceptions as to the jurisdiction, that is, the status or qualifications of the judicial officer who can set the bail. That has not anything to do with right to bail. It says that in those specified cases the only person who can set it is a judge of the Supreme or the Superior Court. The criminal jurisdiction just takes it out of the hands of a justice of the peace or a magistrate or a country court judge, but he

has the identical right to bail when he appears before the Supreme Court judges.

Mr. Gilbert: Mr. Chairman, I have one short question for Mr. Bull with regard to the powers of the justice of the peace. As you know it is now a practice in Toronto, for the justice of the peace to go around to the stations during the night and releasing men. Do you think they have the power to do this?

Mr. Bull: Yes, I distinguish here, if you look at the language of Bill C-4 which says:

...at his appearance in court,

It is specific. You say "in court", whereas in the Criminal Code it says "when brought before a justice of the peace". Now, it does not say where he is brought. It does not say in court. He could be brought before him, as one magistrate did, in the back seat of an automobile in Ontario county. He granted bail—I think he tried the whole case in the back seat of an automobile. He is now a Toronto magistrate. It may be straining the words to say: "When brought before a justice of the peace." We bring the justice of the peace to him because it is a safer thing. You could cart the accused down to some central spot and have him dealt with but it is more

convenient and it seems to suit the pressure of public opinion to have the justice of the peace go to the jail. That is why I say it becomes a hand maiden of the accused.

The Chairman: Are you advocating another question?

Gentlemen, that concludes today's meeting. Next week we will be dealing again with the reform of the bail system. As I mentioned the beginning Magistrate Glen E. Strickland, Q.C., will be our witness on Tuesday and Professor M. L. Friedland will be our witness on Thursday.

Before we adjourn may I, on behalf of the Committee, thank you Mr. Bull for your very interesting and very instructive discourse on this subject. It has been a real seminar and we have all benefited from it.

I would also like to thank you, Mr. Affleck, for your presence here today. I take by your silence that you confirm everything Mr. Bull says.

Mr. Affleck: I will not argue, Mr. Chairman.

The Chairman: The meeting stands adjourned.

APPENDIX "C"

ONTARIO CROWN ATTORNEYS
ASSOCIATION*Interim Report of the Committee
on Bail*

The current interest and concern in many quarters, official and unofficial, in the press and in the public at large in the administration of bail procedures together with a desire on the part of the Association to maintain a lively interest in the improvement of the administration of Justice has led to the appointment of this Committee to make a study of the situation with regard to bail for the following ends:

1. To make recommendations for changes in legislation or practice for the improvement of the bail system.
2. To provide a basis for the standardization and uniformity of practice so far as it is feasible and practicable throughout Ontario.
3. To furnish information to the Attorney General for use in replying to questions and criticisms directed at the system.

Your Committee has studied the legislation, jurisprudence and literature pertinent to the subject; its members have attended conferences and have taken part in group and panel discussions; consideration has been given to the published opinions and criticisms of the system; and insofar as it was able without travelling abroad has made comparisons with other systems.

In addition your Committee has circulated the members of the Association for their problems and comments. The majority responded (it was assumed that those who did not reply had no problems) and their comments were carefully considered and analyzed. It was found that many problems were more apparent than real and arose out of particular complex situations. Those that were of substance were usually encountered in more than one jurisdiction and were common with those encountered in Metro Toronto where the administration of the system has been the subject of most criticism. These

could be classified under two general headings:

(a) Ignorance of the law, appropriate procedures and principles governing the ordering of bail on the part of some or all of those concerned with it (i.e. Crown Attorneys, Judges, Magistrates and Justices of the Peace)

(b) A lack of personnel and facilities for the setting and accepting of bail after Court and office hours, e.g. nights and week-ends.

There being little if any criticism of bail procedures after committal for trial or pending appeal and a cursory examination disclosing no substantial need for reform the Committee has given no serious consideration to that area and has directed its attention to the question of bail before trial.

The Committee is of the opinion that the provisions of the Criminal Code regarding the setting of bail before trial need no revision. Many of the difficulties real or apparent have been due to a misunderstanding of them. An intelligent appreciation of the law and a strict adherence to the letter of it will substantially eliminate many of them. The rest then becomes a matter of the application of principles, underlying the granting of bail and an efficient and realistic maintenance of balance between the due administration of justice on the one hand and the desirability of having the accused at large on the other. This we consider to be a matter of education and have accordingly set out in the following various matters for consideration and discussion.

BACKGROUND

ENGLAND. Bail originated in mediaeval England as a device for releasing prisoners who were awaiting trial. In the early stages of English history, disease-infested prisons and delayed trials necessitated an alternative to holding persons in pre-trial custody. In the beginning Sheriffs exercised their discretion to release a prisoner on his own promise or that of an acceptable third party that he would appear for trial. The third party surety was given custodial powers over the accused and if the accused escaped was required himself to surrender into custody.

Bail literally meant the bailment or delivery of an accused to "gaolers" of his own choosing. Eventually those gaolers or sureties were permitted to enter into a recognizance i.e. to bind themselves in specified sums of money which, instead of themselves, would be forfeit if the accused failed to appear.

That the sureties might be sufficient towards this end it was usual that they be land owners. In earlier times in England when land was held by the few and infrequently changed hands, the land-owner was a man of substance, stability and responsibility within the community. When entering into a recognizance by showing that he was a land-owner the surety was not mortgaging, pledging or "putting up" his land but was rather demonstrating a measure of his worth. He was assuring the authorities that in the event of the necessity of an estreat of the bail there would be no difficulty in recovering the debt from him. This was commonly known as property bail.

It was permissible for a surety in lieu of showing that he was a land-owner to deposit a sum of money or other negotiable security as a measure of his worth. However it was entirely within the discretion of the person taking the bail to accept or reject this deposit. This was commonly known as cash bail.

In neither of the foregoing cases was the surety required to furnish security in advance other than his recognizance i.e. the acknowledgement of his debt. The property or cash was only the measure of his worth and sufficiency.

Originally in England the power to grant bail rested with the Sheriff. Eventually however due to abuses and excesses it was transferred to the Justices of the Peace. Now it can be said as a general rule that any persons who have the power to judge crime have the power to admit to bail. The exercise of the power has always been and still is discretionary and in general is based upon the nature of the charge, the character of the accused and the weight of the evidence. The principal consideration is to ensure the appearance of the accused. However the discretion is sufficiently flexible to permit the denial of bail in cases where the accused is likely to obstruct or pervert the course of justice or commit new offences if released.

UNITED STATES. In the United States the bail concept has followed a different course. The United States Constitution does not specifically grant a right to bail. However, in the Judiciary Act of 1789 a proviso was

inserted to make bail available in all criminal cases except where the punishment was death. This absolute right to bail called for the development of new techniques to supplement the private surety who would personally guarantee to produce his bailee. As a result, the institution of the bondsman arose to take over the function of posting bail. In return for a money premium he guaranteed the defendant's appearance at trial. In the event of non-appearance, the bondsman stood to lose the entire amount of his bond. For this reason, bondsmen in many jurisdictions required indemnification contracts or collateral from the defendant or his relatives to protect themselves from forfeiture losses. Selling bail bonds became a thriving commercial adjunct to the judicial function of setting bail.

In 1961 the Manhattan Bail Project was launched enabling a defendant who had according to a pretrial study, a stake in the community, to be released on his own recognizance. At the present time, several American cities in addition to New York have implemented similar projects. Furthermore the concept of bail is the subject of a comprehensive study by various interested groups throughout the entire United States.

CANADA. The bail system in Canada has developed from the English system and is still generally parallel to it maintaining as its fundamental concept the release of the accused upon his own recognizance or to "gaolers" or sureties of his own choosing. The use of licensed professional bondsmen finds no place in Canada and unlicensed professional bondsmen are looked upon askance as sufficient sureties and in fact in some quarters are held to be illegal. "Security in advance" as it is known in the United States for the most part is not a requirement. Since the revision of the Criminal Code in 1955, however, provision has been made for the ordering of cash deposit as an alternative procedure to the release of the accused on his own recognizance with or without sureties. The appropriate use of this procedure will be discussed further at a later stage.

Other than this relatively new procedure no person is required to "put-up" any form of property as bail. The terms "Property bail" and "cash bail" have been traditionally used but they in actuality are only descriptive of the measure of sufficiency of the surety. It is quite conceivable that a surety might satisfy as to his sufficiency without proof.

ownership of real property or the depositing of cash.

In Canada, all offences are bailable and there is an unequivocal right to apply for bail. The Canadian Bill of Rights provides:

The law of Canada shall be construed or applied so as to

(a) authorize or effect the arbitrary detention, imprisonment or exile of any person

(f) deprive a person charged with a criminal offence of the right to *reasonable bail without just cause*.

However there is no absolute right to bail in the granting of it, the manner of entering into it and the amount of it are discretionary matters to be judicially determined by a judicial officer. (Note: Bail may be granted by senior police officers in the case of offences under Provincial Statutes which of course are not criminal offences.)

ORDERING OF BAIL

The provisions for the ordering of bail prior to trial in *all* offences whether indictable or summary conviction are identical to the provisions relating to preliminary inquiries found in Section 451 of the Criminal Code. (Note: Section 710 empowers a Summary Conviction Court to allow a defendant to be at large without recognizance) 451 (a). Justice acting under this Part may order that an accused at any time before he has been committed for trial, be admitted to bail

(i) upon the accused entering into a recognizance in Form 28 before him or any other justice with sufficient sureties in such amount as he or that justice directs

(ii) upon the accused entering into a recognizance in Form 28 before him or any other justice and depositing an amount that he or that justice directs, or

(iii) upon the accused entering into his own recognizance in Form 28 before him or any other justice in such amount as he or that justice directs without any deposit.

It is clear that the ordering of bail is a judicial act. Contrary to some popular misperceptions the Crown Attorney does *not* set bail. It is proper however that he as well as the accused or his counsel should be heard on the matter. The information he can supply as to the nature of the offence, the weight of the evidence, the character and background

of the accused, the likelihood of his appearance and other relevant factors referred to hereafter will assist the judicial officer in exercising his discretion which must not be done perfunctorily.

It will be noted that there is no reference in clauses (i) and (iii) to any requirements for furnishing security in advance or for putting up property real or personal. It cannot be said that an accused is held in gaol merely because he is indigent or impecunious. It may be that he cannot find persons who will be surety for him or who are acceptable as sureties. That however is a different consideration.

The provision in Clause (ii) for a cash deposit as mentioned earlier was introduced into the Code at the time of the revision in 1955. It has inherent in it some of the shortcomings of the American System requiring security in advance and might lead to the unjust detention of the indigent accused if used indiscriminately.

There are however certain specific situations where the order of a cash deposit may be appropriate, e.g.

(a) where an accused from a foreign country or another province is charged with a non-extraditable offence or a minor offence not justifying public expense in returning him for trial if he flees. Allowing him to go on his own bail will be ineffectual and it will be unlikely that he can find sureties. A cash deposit in a reasonable amount but in excess of the likely penalty if it does not ensure his attendance at least affords funds to return him or stands in lieu of penalty;

(b) in extradition cases the fact that the fugitive has already fled militates against any bail on the mere recognizances of sureties. A cash deposit in a substantial amount would be appropriate deterrent to flight.

It is to be noted that it is not clearly specified whose deposit it is. A plain reading of the Clause would appear to indicate that it is the accused's. However as cash cannot be identified it is open to an interpretation that it could be anybody's money. This opens the door to the professional bondsman.

The following passage from the Annotation on Bail in Criminal Cases 47 C.C.C.I. by Eric Armour K.C. former Crown Attorney, Toronto, is illuminating:

"There are however practical objections to 'cash bail'. To accept from a

prisoner himself, cash or securities for bail is often, in effect, to permit him to purchase his freedom and to escape punishment for his crime. Where there are no sureties financially interested in seeing the prisoner will answer the charge and who, if they have any doubts about it can render him into custody, the chances of the accused appearing to stand trial are very greatly lessened. On the other hand, cash bail, if accepted from sureties may lead (as it often does) to indemnification of bail and other irregularities."

PURPOSE OF BAIL

It has frequently been said by some authorities that the only purpose of bail is to ensure the appearance of the accused at his trial. That this is too narrow a view has been held by other authorities. In order to test its validity one may look to the reasons for arrest to see how the ordering of bail will affect them.

An arrest is made

1. As the first step in bringing a suspected offender to justice, to prevent his flight and ensure his appearance in Court;

2. To prevent the continuation or repetition of the offence;

3. To protect persons and property from harm;

4. To protect the accused from harm
 - (a) from others
 - (b) from himself;

5. To permit investigation
 - (a) of the accused—interrogation—search—examinations physical and mental
 - (b) of premises and place—search—photographs fingerprint and scientific examinations
 - (c) of persons—victims—witnesses—associates
 - (d) of other possible occurrences;

6. To prevent the interference or tampering with witnesses or demonstrative evidence by the accused or any other attempt to pervert the course of justice;

7. To permit the photographing and fingerprinting of accused in indictable offences.

If the ordering of bail or the premature ordering of bail will frustrate any of the reasons for arrest and render the arrest ineffectual the Court should exercise its discretion with great care and would be justified in refusing bail entirely.

REASONS FOR OPPOSING BAIL:

The following are among the reasons for opposing bail and on which a judicial officer might act:

1. Likelihood of flight and non-appearance
2. Gravity of the offence
3. Strong prima facie case
4. Bad character of accused
5. Lack of any stake in the community
6. Previous bad criminal record
7. Previous record for skipping bail
8. Wanted in another jurisdiction
9. Likelihood of continuation or repetition of crime
10. Likelihood of obstructing justice
11. Danger to the community, the victim or himself
12. Necessity of examination, physical (V.D.) or mental
13. Further investigation—interrogation—line-up—examination of scene of crime
14. Indemnification of bondsmen
15. Offence committed while on bail for another offence.

AMOUNT OF BAIL

At Common Law it was a misdemeanour to exact excessive bail. By the Bill of Rights the right to bail is the right to reasonable bail. Reasonable however means reasonable in the circumstances. While the bail must not be prohibitive nor punitive it must be of sufficient amount to ensure his appearance. It is possible it should be within the means of the sureties he is likely to find. However if the accused himself is indigent and his sureties impecunious that may be indicative that he is a poor risk.

The amount of the bail should be in excess of the fruits of the crime and in excess of the penalty, otherwise there may be a temptation to purchase freedom by indemnification of the sureties.

In any event the amount of the bail must be realistic and have some logical basis. The traditional practice of picking some nice

and sum which is largely unrelated to anything, does nothing but invite distrust and criticism of the system.

SURETIES

The choice of sureties lies with the accused. However they must be sufficient sureties, i.e. of an ability sufficient to answer the sum in which they are bound. In addition, since they are in a sense "gaolers" of the accused with same responsibility to see that he appears when required, they must be of a character to assume and carry out conscientiously that responsibility. Although no justification is requisite, it is necessary that they satisfy the person by whom the bail is to be accepted that they are sufficient. Under the provisions of the Crown Attorneys Act they must also satisfy the Crown Attorney as to their sufficiency. This can best be done by the making of an Affidavit of Justification, a form for which is set out in Eric Armour's Annotation in 47 C.C.C.I.

If the surety justifies himself by means of real property and the amount of the bail set is substantial, he should be required to furnish satisfactory proof of ownership, the value of the property or equity held and the extent of any encumbrances and that there are no prior claims by way of execution or default. The following persons should not be considered as sureties:

1. A person who has been indemnified or who has received or been promised consideration for going bail;
2. A non-resident of Ontario;
3. Counsel for the accused;
4. Anyone under 21 years of age;
5. An accomplice;
6. A person in custody or on bail awaiting trial;
7. A person with a previous record for a serious offence;
8. A person who has gone bail for someone other than the accused. (Note: a surety for more than one accused in the same case may, in proper circumstances, be acceptable.)
9. A married woman, unless she has separate property;
10. The spouse of the accused.

The Role of the Crown Attorney

As previously stated, the function of ordering bail is a judicial one to be exercised in criminal offences by a judicial officer. The

functions of taking bail is a ministerial one to be exercised by the Justice of the Peace. Under the provisions of the Criminal Code, the Crown Attorney has no statutory position in these procedures. However, it is proper that the Crown Attorney should inform himself as to the circumstances in each case of an application for bail so that he may make representations to the judicial officer as to whether bail is proper in the circumstances and whether or not the accused should furnish sureties or whether he should make a cash deposit. He should also assist in the event that bail is to be ordered by recommending a proper amount.

The Crown Attorneys Act provides:

"Where a person is in custody charged with, or convicted of, an offence and an application is made for bail, enquire into the facts and circumstances and satisfy himself as to the sufficiency of the surety or sureties offered and examine and approve of the bail bonds where bail is ordered"

It is not clear in this provision what course the Crown Attorney should take in the event that he is not satisfied with the sufficiency of the surety. There is no power for him to refuse the acceptance of bail. It would seem that his position would be to advise the justice accepting the bail that he has examined the sureties and is not satisfied as to their sufficiency.

Under the Bail Act R.S.O. 1960 Ch. 28, the Crown Attorney has a duty to see that a Certificate of Lien is registered with respect to the land mentioned in the bail. It should be noted that in the case of an estreat, recovery of the bail is not limited to the land mentioned or against which a lien has been registered and therefore the effect of this Certificate does not limit the bail to that specific piece of property. It would seem therefore that the only purpose of the lien is to ensure that there would be at least enough property from which to realize the bail, even in the event of a transfer or alienation of the property by the surety.

ESTREATS

The matter of the estreat of bail is still under consideration by the Committee and no comment is made at this time.

RENDER AND CANCELLATION

A preliminary examination of the provisions in this area indicate that there may be need for legislative amendment. Further study is being given before any recommendations are made.

Your Committee in submitting this interim report has included matters which are basically educational in nature. They have been offered, not as an attempt to dogmatise to the members of the Association, who are equally familiar with them, but as a basis for discussion directed towards a synthesis of thought and standardization of procedures. It is hoped that they will be accepted in this spirit.

This report does not exhaust the subject matter under consideration and your Committee is continuing with its studies.

October, 1965

W. Bruce Affleck, Chairman

Lloyd K. Graburn, Q.C.

Henry H. Bull, Q.C.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE
ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 8

TUESDAY, NOVEMBER 14, 1967

RESPECTING

The subject-matter of Bill C-4,
(An Act concerning reform of the bail system).

WITNESS:

Magistrate Glenn E. Strike, Q.C., Chief Magistrate,
City of Ottawa, Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 14, 1967.

(8)

The Standing Committee on Justice and Legal Affairs met at 11.15 a.m. this day. The Vice-Chairman, Mr. Forest, presided.

Members present: Messrs. Aiken, Brown, Choquette, Forest, Gilbert, Goyer, McQuaid, Pugh, Stafford, Tolmie, Whelan, Woolliams—(12).

Also present: Mr. Mather, M.P.

In attendance: Magistrate Glenn E. Strike, Q.C., Chief Magistrate, City of Ottawa, Ontario.

The Vice-Chairman introduced the witness, Magistrate Glenn E. Strike, Q.C., Chief Magistrate, City of Ottawa.

Before Magistrate Strike's opening remarks, on motion of Mr. Pugh, seconded by Mr. Choquette,

Resolved,—That reasonable living and travelling expenses be paid to Professor M. L. Friedland, who has been called to appear before this Committee on November 16, 1967, in the matter of Bill C-4.

Magistrate Strike addressed the Committee, stating his views in relation to the subject-matter of Bill C-4 (*An Act concerning reform of the bail system*). The witness noted that the Sentencing Committee of the Ontario Magistrates Association has been considering the subject-matter of Bill C-4. He was authorized by its Chairman to say that representatives of the Association would appear as witnesses if they were invited.

At the conclusion of his opening remarks, Magistrate Strike was questioned by the Members, for the remainder of the meeting.

The Vice-Chairman thanked the witness for his appearance before the Committee and for his assistance in connection with the Committee's consideration of the bail system.

At 12.30 p.m., the Committee adjourned until Thursday, November 16, 1967 at 11.00 a.m., when the witness will be Professor M. L. Friedland.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, November 14, 1967

(11:15 a.m.)

The Vice-Chairman: Gentlemen, we now have a quorum. Your Chairman was detained in Toronto and he asked me to take over this morning.

Before starting the hearing I would like to mention that next Thursday, November 16, Professor Friedland is going to appear before the Committee. May I have a motion that reasonable living and travelling expenses be paid to the professor?

Mr. Pugh: I so move.

Mr. Choquette: I second the motion.

Motion agreed to.

The Vice-Chairman: This morning we will continue consideration of the subject matter of Bill C-4 which is sponsored by Mr. Mather and it is an Act relating to reform of the bail system. Last week we heard from Mr. Bull, the Crown Attorney from Toronto, and this morning we are going to hear from the Bench.

We have the honour and pleasure to have with us this morning the Chief Magistrate or the City of Ottawa, Magistrate Glenn Strike. Magistrate Strike has been a member of the Bench since 1931 and he was appointed King's Counsel in 1944. We are glad to have you with us, Magistrate Strike. I presume you will make some comments on Bill C-4 and you will then be available for questioning by members of the Committee. This is the usual procedure. Without further delay I will ask our distinguished guest to comment on Bill C-4.

Magistrate Glenn E. Strike (Chief Magistrate of Ottawa): Mr. Chairman and gentlemen, I have not really had an opportunity to go into this matter in too much depth because I just received a copy of the Bill the other day and, as I see it at the moment, the Bill is altogether too short in that there must be a great many more definitions and there must be a number of other provisions in such a bill as this. I would suggest, if we are going

to have a bill which deals exclusively with bail, that it should cover the whole subject.

I knew that you had heard from Mr. Bull and I had a reasonably good idea of the recommendations which he might make because the local Crown Attorney has been in consultation with me on the recommendations that his department might have with respect to Bill C-4. I may say, Mr. Chairman, that the magistrates of Ontario have a very active organization and this Bill has recently been presented to our sentencing committee and they are making a study of it and of the whole question of bail. If at any time you desire them to make some representations to your Committee they would be very happy to do so. I have been authorized by the president of our organization to tell you that.

● (11:20 a.m.)

Mr. Pugh: Are your views in line with theirs, sir?

Magistrate Strike: Up to a point, yes, and I do not think I need repeat anything that the Crown Attorney from Toronto has said. One of the things I am particularly interested in, which was also mentioned by Mr. Bull, is the question of bail prior to appearance in court. If I might take a few moments I would like to describe what happens in the court over which I preside with respect to matters of bail.

In my opinion it is very important that the first person who has anything to do with bail be a highly qualified justice of the peace. In our office we have six such qualified men who are specially trained with respect to the matter of bail. They are all senior officials of our office who have been instructed by all the magistrates with respect to bail and they are the people who come in contact with the prisoner the minute he is arrested and brought to the station. One of the first things the prisoner is interested in is the matter of bail. The justice of the peace is there and he knows the policies that are followed by the office. He is the first person who has anything to do with the matter of bail and his instructions are fairly well in line with the suggestions set out in Bill C-4. Those things

that one takes into consideration when setting bail are fairly well codified in Bill C-4. The main consideration, of course is whether or not the person will attend for his trial.

The next step, of course, is that the person comes before the court. By this time bail has either been set or it has been refused by the justice of the peace. When the person appears in court the matter of bail is then gone into by the magistrate. If there are any complaints about the amount of bail that the justice of the peace has set, that is then gone into by the magistrate and if necessary a whole full-scale hearing is held in the magistrate's office. You must understand that the minute a magistrate, judge or any judicial official makes a full investigation into the matter of bail he immediately disqualifies himself from hearing the case because if he goes into that matter as he should he will of necessity know something about the man's record. Of course, a man's record is not evidence in court and once the magistrate knows that he becomes disqualified.

In addition to the man's record, the Crown Attorney must give the magistrate some facts with respect to the type of evidence which will be adduced and whether or not it is a strong case. If there is any dispute as to the amount of bail the magistrate has to go into much of the Crown evidence. If bail is then set at a figure that the accused is not able to raise at the moment or if bail is refused he must be brought back before the court, as you know, every eight days and at that time it is gone into again. The question is always asked by the court, "Why is this man still in custody?", so the matter of bail is gone into again. It therefore seems important to me that all the procedures should be followed and the justice of the peace should be a person who is, first of all, qualified to set bail for the person charged. In the first instance that gives this person a chance to put up bail before he appears in court and while he is awaiting his appearance. In addition, in 95 per cent of the cases it prevents the magistrate from becoming disqualified.

This is not so important in the larger centres but it is very important in the smaller centres because they do not have very many magistrates. It becomes very important in both the larger and smaller centres in the first instance that the justice of the peace is a person who is qualified to set bail. If a person has surety there must be provision for the surety to retire from his position and the person ought to be presented to the court

again so that his bail can be changed or to have somebody else put in his place. There must be a number of provisions inserted in order to look after that matter. This was mentioned by Mr. Bull and there is no reason for me to add anything further except to say that I agree with his presentation with respect to these matters.

Mr. Pugh: Are there any questions?

The Vice-Chairman: Yes, I have Mr. Stafford, Mr. Tolmie and Mr. Pugh on my list.

Mr. Stafford: Magistrate Strike, instead of this being a separate Bill, would it not be far more obvious to have amendments made to the existing law?

Magistrate Strike: I would think so. I think it would be just as easy to do it that way. I do not know if it is necessary to codify the reasons for bail or not. They are so general now that...

Mr. Stafford: The point I was getting at though, is that you would have duplicity; would be far better to amend the Criminal Code than to have conflicting legislation.

Magistrate Strike: I think it would simplify.

Mr. Stafford: I do not have my copy of the Criminal Code with me today but I took a look at it when Mr. Bull was here and without going into all the sections, is it not correct that the Criminal Code actually gives the accused more right to bail than Bill C-4?

Magistrate Strike: I would say so, yes. Under the Criminal Code anyone is entitled to bail except in cases of certain offences where it must be set by a Supreme Court justice rather than a magistrate.

Mr. Stafford: But the point I am getting at is that it does not even go as far as clause 4 of this Bill, which reads:

...other than an offence—by death or imprisonment for life...

The Criminal Code would actually allow them out on their own recognizance if the Supreme Court justice who has jurisdiction would permit it.

Magistrate Strike: That would be similar to the offence of housebreaking, where a person could be sentenced to life imprisonment and where it is sometimes not a very serious

pe of offence. In fact, you might get a suspended sentence for it.

Mr. Stafford: To make the point clear, then, this Bill is even more restrictive than the Criminal Code and not quite as lenient.

Magistrate Strike: In some ways not as lenient, no.

Mr. Stafford: I suppose you have often heard it said that the important thing about British justice was not so much the laws but the administration of those laws. Is that correct?

Magistrate Strike: I would say so.

Mr. Stafford: Is the complaint here not about the administration rather than the law which exists?

Magistrate Strike: I gather from what Mr. Bull said that the question of bail depends on always will a great deal on the people who administer it. It depends on people like Mr. Bull, myself and others who are appointed to administer it whether the person is dealt with immediately or not or whether he is dealt with too strictly. I think the human element will always enter into it.

Mr. Stafford: Do you not feel that it is much easier for an accused, as I think Professor Friedland pointed out, to prepare a defence if he is out on bail?

Mr. Strike: I would say so, yes.

Mr. Stafford: Is it not correct in smaller places where there is a lock-up that many times when people are arrested the police have to take it upon themselves to allow them to stay in which, under the Summary Convictions Act, they can do, can they not?

(11:30 a.m.)

Magistrate Strike: Under the provincial statutes?

Mr. Stafford: Of Ontario.

Magistrate Strike: Yes.

Mr. Stafford: And most of the charges, in numbers, are under provincial statutes?

Magistrate Strike: I would say a great many are, yes.

Mr. Stafford: It is correct, then, that many, many people are arrested under the Highway Traffic Act, and the Liquor Control Act, and other provincial statutes.

Magistrate Strike: That is true.

Mr. Stafford: And officers hating to take this privilege on themselves, if they already have, arrest people sometimes in smaller places and these people find themselves sitting in jail a week, or even two weeks later, waiting until the magistrate gets to that particular part of the country.

Magistrate Strike: I do not know that it would be that long, because there is always a justice of the peace available in the area. As you say, I know that the police do sometimes hesitate to take upon themselves the responsibility of setting the bail, although they are authorized to do it. In the smaller places, I think they should do it; they should be instructed to do it by the presiding magistrate of the area.

Mr. Stafford: But even in Ottawa, is it not common knowledge that some people are arrested and others are summonsed for the very same offences?

Magistrate Strike: It is possible.

Mr. Stafford: At the discretion of the police?

Magistrate Strike: At the discretion of the police, although I may say that nowadays the tendency is more to summons than to warrant. You see, the arrest on warrant is generally done right on the spot, whereas the summons is done after they have discovered that an offence has been committed.

Mr. Stafford: I realize that, but as I say, in my experience in magistrates' court down in Southwestern Ontario, it is a common thing to see some people arrested for impaired driving on the spot, and kept there possibly until the court comes up on Monday morning, and others allowed to reach the court on summons.

Magistrate Strike: I cannot answer that question.

Mr. Stafford: But that happens in all courts, does it not? I mean that the police have a certain discretion?

Magistrate Strike: That is true; yes, they have. As a rule, in a case of impaired driving, you discover that if anybody is willing to come and drive the person home, the police are quite happy to have him come and drive him home. Quite often you discover that when the police get in touch with their

homes, the suggestion is: keep him there overnight; it will do him good. That is sometimes what happens. Then the wife, the next day, does not like to say that she has said that, and the police get blamed for keeping her husband there all night.

Mr. Stafford: Sometimes the attitude of the accused to the police at the time, his animosity or his friendliness...

Magistrate Strike: That can happen.

Mr. Stafford: ...can mean whether or not he goes to jail, which is not a very good yardstick in judging whether a man should be locked up for a couple of days, is it?

Magistrate Strike: I imagine that that could possibly happen in a smaller area, but I cannot conceive of its happening in an area like Ottawa. It would certainly have to be a small area where there were no justices of the peace or magistrates around; they are always available.

Mr. Stafford: But talking about the arrest, it has been my experience that many people are arrested on the spot for impaired driving, and many are allowed to go home.

Magistrate Strike: Do you mean without a charge, or just summonsed?

Mr. Stafford: No, just summonsed later.

Magistrate Strike: That is possible. You see, it is all right to say "allowed to go home", but that is, provided you can get somebody who is going to take him home. It would not be fair for a policeman to arrest a person for impaired driving and then let him drive his own car after that.

Mr. Stafford: Oh, no.

Magistrate Strike: You would have to make some arrangements about it.

Mr. Stafford: Well, when that happens there is usually a good defence to the charge.

Magistrate Strike: One of the best.

Mr. Stafford: I do not want to keep you too long on these smaller points, but I have noticed that it is very difficult for anyone out of the jurisdiction, even out of the county in which you live, and especially when you are from another province, to get out on your own recognizance before at least being in front of a magistrate, and even after you do get before a magistrate if you are say, from Quebec, as I saw a case when I was in St.

Thomas last summer, and as I sat there on another case involving, I think, four people from Montreal found in possession of a stole transistor radio; they had already spent about a week in jail and when they came up to the court for the second time, they still had not had an interpreter. They were told it was going to be adjourned another week, and all four of them were in for what seemed a comparatively small charge.

In this day, when communications are so quick, when people have security numbers, belong to clubs and have all sorts of things from drivers' licences to OMSIP cards, whatever they have in Quebec, and that it is so easy for the police to identify the people, do you not think there should be far more leniency in the administration of justice to allow these people to go on their own recognizance? Ninety-nine per cent of them would still show up and it would save all the hardship of keeping people in jail, losing their jobs, and all the inconvenience not only to the public but to the prisoners themselves.

Magistrate Strike: When you put it that way, of course it would; I can hardly conceive of its happening, but it must have happened because you say you have seen it.

Mr. Whelan: May I ask a supplementary question? I should properly address my question to Mr. Stafford rather than to the witness. As a federal member representing Canadians, when he was present in the court, did he not object to the treatment given to these people? With his great legal and parliamentary experience, he should have objected; he failed if he did not.

Mr. Stafford: Well, that is a matter...

Mr. Pugh: Just put in they are both Liberals.

The Vice-Chairman: Are you through, Mr. Stafford?

Mr. Choquette: He must be a potential senator.

Mr. Stafford: Do you not feel that far more consideration should be given in the administration of justice to allow people out on their own recognizance, especially if they are out of their jurisdiction?

Magistrate Strike: The trend, within the last number of years, has been that way. I will say that some years ago it was much stricter than it is now. Nowadays there are more people on their own recognizance than

there are actually on bail itself. You will discover that if you look at the list now.

Mr. Stafford: Well, I will get right to the point that I was going to lead up to. In Ottawa itself, if a man is charged with impaired driving, say, late on Saturday night...

Magistrate Strike: Yes.

Mr. Stafford: ...and he spends the night in jail, and the justice of the peace comes into the jail at 10 o'clock or 11 o'clock, or whatever time it is that they usually come in, does she let all of these residents of Ottawa out on their own recognizance, or does she insist on having the \$100 cash bail?

Magistrate Strike: It is not a "she"; it is a "he".

Mr. Stafford: Well, "he" or whatever it is.

Magistrate Strike: As a rule, he likes to have bail, perhaps \$25 to \$50, but never more than \$50; and if they do not have the money but are able to identify themselves, they are let out on their own recognizance.

Mr. Stafford: They are let out?

Magistrate Strike: Yes.

Mr. Stafford: If they are able to identify themselves.

Magistrate Strike: If they are able to identify themselves with any reasonable certainty, yes; we do not have any problem with respect to that. I find that on Monday mornings almost never is there an impaired driver in the prisoners' dock.

Mr. Stafford: But in other cases, in other jurisdictions, I can tell you that the bail that they insist on is much higher.

Getting to my final point, there does not seem to be any conformity in the request or demand for bail across this province.

Magistrate Strike: That could be so.

Mr. Stafford: I know this is an extraneous question, but it is one that goes right down through the whole web of our criminal law. For instance, driving under suspension might go to certain jurisdictions where they fine \$50, and others where the magistrate, as Jim Brown will know, fines them a minimum of 30 days for exactly the same offence. On one side of the border of a county the minimum penalty will be 30 days, and right across the

border it will be a \$50 or \$100 fine. Do you agree with that?

Magistrate Strike: Yes.

Mr. Stafford: Actually, almost the same impossible situation rests with the decision of justices of the peace and magistrates in this province as to bail. In some places it is lenient, and in other places it is real hardship. Is that not correct?

Magistrate Strike: It could be; I am not qualified to answer that question because I only know about the bail in my own area and areas that I am familiar with; but I am just familiar with the bail situation in my own area. We have endeavoured in this area, as far as we can, to be as lenient as possible; that is to say, that a person should not be kept in custody unless it is considered necessary because of the variety of circumstances that make it necessary to have bail set. But in cases such as you suggest, more or less minor cases, I think most of us are coming to this business now that they are put out on their recognizance. That is the reason that our association is taking a strong stand on this matter. I think you will find that we are endeavouring, through our association, to have much more uniformity, even in questions of bail.

Mr. Stafford: Then there is such a lack of uniformity...

Magistrate Strike: That is one of the problems.

Mr. Stafford: ...that something should be done?

Magistrate Strike: I can agree with you there.

• (11:40 a.m.)

Mr. Whelan: May I ask a supplementary question concerning justices of the peace?

What instructions are they given? For instance, there are a couple of justices of the peace in my area that I do not think have any more legal knowledge than I have, and I am not a lawyer.

Magistrate Strike: Well, the justices of the peace that we have are all senior officers in the Magistrates' Court office. They acquire some knowledge over the years that they are in the office, they are given instructions, and they get more lectures from the magistrates on questions of bail, information, summonses,

and warrants than the magistrate had when he went to law school. They are not given the authority to act as justices of the peace, to accept an Information, to have a charge laid, to issue a summons or make up their mind whether they will issue a summons or a warrant until they are fairly well qualified and instructed. We have regular classes for our justices of the peace, and we have regular classes on the question of bail, and regular classes on the question of receiving of Information, and what to do after you have received it, and whether to issue a summons or a warrant.

Mr. Whelan: There are only certain justices of the peace that can do this, then?

Magistrate Strike: They have to be authorized by the senior magistrate or they cannot do it. If they are not authorized, under our system by the senior magistrate, then they cannot do this job; they cannot put a man on bail, or sit on a minor case.

Mr. Whelan: This is what I wanted to clarify.

Magistrate Strike: For instance, our justices of the peace sit in minor traffic cases. If a fellow wants to come and plead guilty to a minor traffic case, he can do it before any group of justices of the peace, if he wants to do that.

Mr. Whelan: The point that I wanted to clarify is that a lot of people whom we know as justices of the peace are not qualified as such and are not allowed to act in the capacities you mentioned.

Magistrate Strike: That is correct. In Ontario, and I can only speak for Ontario, the Justice of the Peace Act says that no justice of the peace shall do these specific jobs unless he is especially authorized.

Mr. Pugh: Where there is more than one sitting at a time, have certain powers been extended in this province?

Magistrate Strike: No. Two can sit but I do not think it is ever done; I have never known it to be done.

Mr. Pugh: When I went to Osgoode years ago I seem to recall that two justices of the peace equalled the power of a magistrate.

Magistrate Strike: Oh yes, a magistrate has the power of two justices of the peace.

The Vice-Chairman: Mr. Gilbert, do you have a supplementary on the same point?

Mr. Gilbert: Yes, Mr. Chairman. Mr. Strike, if we are agreed that there is a lack of uniformity with regard to the application of bail across the province, would it not be necessary then to codify the basis in the requirements of bail either in Bill C-4 or as an amendment to the Code?

Magistrate Strike: Uniformity relates to the amount that is set by the various justices of the peace or magistrates. One magistrate might say that he is satisfied with \$25 whereas another might want \$100, and that is the problem. It is difficult to codify that. I think you will find within the next few years that there will be much more uniformity in the question of bail and, as far as possible, sentences, because of the very strong stand that our association is now taking.

Mr. Aiken: I have a supplementary on that.

The Vice-Chairman: Mr. Aiken.

Mr. Aiken: Therefore it would really make it easier for the police, the justices of the peace and others if they started off on the basic premise that a person could be released on his own recognizance unless there were other good reasons for not doing so, as in this Bill?

Magistrate Strike: Well, they can do that now.

Mr. Aiken: But I would think the Bill itself spells it out much more clearly.

Magistrate Strike: Well they have the right now and there would be no particular harm in spelling it out.

Mr. Aiken: But the trouble is that they do not do it.

Magistrate Strike: I can only speak of the area in which I operate.

Mr. Aiken: I come from a rural area; they lock them up every chance they get and there is nobody around to bail them out. This is where the importance of direction comes in that they shall release them.

Magistrate Strike: I think what you mean is that it would be an advantage to the police too if they were given authority under the Summary Convictions Act as well as the federal penal statutes. The only authority they

have now is a provincial penal statute under the Summary Convictions Act.

Mr. Stafford: But the magistrate certainly has the necessary power under the Criminal Code.

Magistrate Strike: Oh yes, of course the magistrate can do this.

Mr. Stafford: The point I was getting at a few minutes ago is that the power is so broad under the Criminal Code today that a person can get out on a capital murder charge on his own recognizance if the judge having jurisdiction wanted to do that.

Magistrate Strike: That is right.

Mr. Stafford: Could you tell me how many charges were laid in the City of Ottawa during the last full year?

Magistrate Strike: What kind of charges do you mean?

Mr. Stafford: The information I want is the percentage of people, as Mr. Whelan might say, that skip bail or do not show up on their own recognizance?

Magistrate Strike: I would say that the percentage is very small. I am speaking off the top of my head now but I would say, in the last year, not more than 10, and that is out of thousands of cases.

Mr. Stafford: Might I say, Mr. Strike, out of many thousands of cases?

Magistrate Strike: Oh yes, many thousands of cases; we would have 60,000 or 70,000.

Mr. Stafford: And out of 60,000 or 70,000 cases...

Magistrate Strike: Yes, but it is not fair to say that, because of that 60,000 or 70,000 you have 45,000 or 50,000 minor traffic offences.

Mr. Stafford: That is right: making an improper left turn, and all such things as that.

Magistrate Strike: Yes.

Mr. Stafford: But it is still a charge. The point I am getting at is this: Do you feel that payment of \$50 or even \$100 bail, whether the accused pays it or someone else, is a guarantee that he will show up?

Magistrate Strike: No. In my opinion, the only thing that is required in these cases is

proper identification, and we have so instructed.

Mr. Stafford: That is right.

Magistrate Strike: The older I get, and I do not suppose I will be sitting much longer, I am strongly coming to the view that eventually it will be a question of bail or no bail.

Mr. Stafford: But to get right to the point, if a man is not going to show up the \$50 bail he files with the justice of the peace is not going to make much difference, is it?

Magistrate Strike: No. Actually that is only an aid to quick identification. If a fellow pays the \$50 the chances are that he is Joe Smith if he said he was Joe Smith.

Mr. Stafford: But it also means that every year they keep many many people in jail a long time because they do not have the \$50.

Magistrate Strike: I cannot say that that happens.

Mr. Stafford: I have just one final question. When certain people talk about bail why do they say that within the course of the next few years they are going to try and clean this up? As far as uniformity and administration is concerned, why can not the magistrates, the crown attorneys and everyone else concerned be all brought together to remedy this situation. Let us do this tomorrow and not in the next few years.

Magistrate Strike: That is a good idea.

Mr. Stafford: I have been hearing this ever since I have been in criminal law in Ontario, since 1954, and it is always "within the next few years". That is all I have to say.

Mr. Whelan: On a point of order, Mr. Chairman. I never suggested that these people would ever skip bail. I am a strong believer in the rights of the poor man as well as the rich man, and I am a strong believer in the last statement that Mr. Stafford made. I do not know why he suggested that I would suggest that these people were skipping bail at any time.

The Vice-Chairman: You can take it up with him after.

Mr. Whelan: I just want to make the record straight.

The Vice-Chairman: I recognize Mr. Tolmie.

Mr. Tolmie: Just to get back to the subject, Magistrate Strike, you mentioned that you have available in your area some very competent justices of the peace.

Magistrate Strike: Yes.

Mr. Tolmie: I think the problem in smaller centres, as has been mentioned, is the fact that there might be one justice of the peace who might not be available, particularly on a weekend. You also mention the fact that police officers, within a certain scope, are able to grant bail. Now I would like to know the difference in their power as far as granting bail is concerned, as opposed to that of justices of the peace and what you would recommend to improve the situation?

Magistrate Strike: The justice of the peace has the same power as the magistrate to grant bail; the police officer has only power to grant bail on a provincial penal statute, which would come under the Summary Convictions Act.

Mr. Tolmie: Thank you. You also mentioned in your evidence that generally speaking they were rather reluctant to grant bail.

Magistrate Strike: The police officers?

Mr. Tolmie: Yes.

Magistrate Strike: I do not know why and I have never known why. They just do not seem to want to get mixed up in it, and I do not know why that is so.

Mr. Tolmie: Would you think it would be wise to give some directive to police officers that would enable them to assume this responsibility?

• (11:50 a.m.)

Magistrate Strike: If it is possible. Before we had our present system set up, when I used to have the telephone beside my bed in the early days, it worked perhaps somewhat better than it does now. They would call up and ask for advice. I would ask if they have proper identification. They would say they had and would ask about bail. I would say that I was satisfied. Or in those days we would set bail of \$25, \$50 or something of the kind, and it would be paid right there, and the police would accept the responsibility because they had this assurance from me. I hope that system is long gone. I would hate to have it return.

Mr. Pugh: I take it, sir, you went on strike!

Magistrate Strike: I did.

Mr. Tolmie: I have one last question. As far as bail is concerned, do you think it would be feasible to increase the jurisdiction of the police in the federal statutes?

Magistrate Strike: I do not see any reason why it should not be done and I do not see any reason why the police cannot very well accept the responsibility. They are actually in the best position to establish the identity that we speak of.

Mr. Tolmie: Thank you.

The Vice-Chairman: Mr. Pugh, you are next.

Mr. Pugh: Sir, I would like to get back to this Bill. I gathered from your remarks that Bill C-4 might well be termed limiting to your present powers.

Magistrate Strike: Anything that is said to codify limits, and the way the Criminal Code is worded at the moment, if it is necessary to amend it, it could very easily be amended. As I mentioned before, if you are going to have a bill which sets out bail, then you should put everything in it. You would have to have quite a long bill. There are so many things that are not in here, as Mr. Bull mentioned that would have to be in unless you merely wanted to amend the Criminal Code.

Mr. Pugh: But Bill C-4 would almost produce a limiting factor on those powers which you now have and which are held generally?

Magistrate Strike: I would say so, yes.

Mr. Pugh: We heard a lot from Mr. Stafford about the fact that something should be done—and you also mentioned this—in regard to uniformity, and I gathered from your remarks that if this were codified might put a restriction...

Magistrate Strike: Once you start to limit discretion it presents quite a problem. Up to a point you have to depend on the person who exercises the discretion to exercise reasonably, and the human element is always there. This is the thing that causes the trouble.

Mr. Pugh: So that uniformity should actually not come about by codification but by closer contact with all magistrates...

Magistrate Strike: That is right.

Mr. Pugh: Within the jurisdiction; I do not mean within the magistrate's jurisdiction but for instance, in Ontario, British Columbia

Alberta, or wherever you happen to be. I am speaking of uniformity as to the people you keep in jail, whether bail should be set at 100 or whether you should keep them in the jug and let them cool off all down the line. However, you do not really think that codification is the answer to that?

Magistrate Strike: I do not think codification is the answer. I think it is too difficult to codify. When people are administering something over which they have some jurisdiction, then you have to depend on those people to do it properly. There is no reason why they cannot be given some direction but when you start to codify there is a tendency to limit.

Mr. Pugh: Mr. Aiken is not here at the moment but he brought up a rather good point when he sort of stressed the fact that all should or must be granted. Perhaps we could start with the fact that a man must have bail and stress that point and do it in words.

Magistrate Strike: Instead of just paying in accordance with the Criminal Code, he is entitled to it?

Mr. Pugh: Yes. What do you think about that as a first consideration?

Magistrate Strike: It is there now.

Mr. Pugh: That is right, but it is the actual wording I am concerned about. Not that it be mandatory that everyone should have bail but that it be stressed as a prerequisite that must be examined in the light that he is entitled to bail. This is of first consideration. Do you think there is any wording that could be used...

Magistrate Strike: I do not know that it is going to improve the situation but it certainly would do no harm.

Mr. Pugh: In other words, you feel that setting it out by way of a bill or by amendments to the existing law, or something of that nature, and possibly if we go back once again to the jurisdiction—and I am speaking of provincial jurisdiction—of magistrates that is a matter of meeting together and saying, "We have to take this attitude, let us start talking along the lines that every person should have bail if at all possible."

Magistrate Strike: We can get together and decide that we are going to do a certain thing but sometimes when you get a group of magistrates together, which is the case in our

regional meetings, there can certainly be quite a divergence of ideas because in their particular area they may have a problem I do not have or I may have a problem they do not have, and what on the face of it might look like a bit of injustice in their area may be caused by certain conditions that exist in their area.

Mr. Pugh: It might well be, for instance, that in a town along the border they have to be a little harsher because there probably have been incidents...

Magistrate Strike: I have no doubt that in certain jurisdictions there are a great many warrants of commitment waiting in the offices for people who did not come back. This occurs in minor offences and that is always so.

Mr. Pugh: I have two further points. One thing I want to stress is the fact that I come from a small town in British Columbia and I know that the magistrates are readily available and that no one stays in the cooler overly long. There is rarely a case that does not come up snap, bang, right off the bat. If it occurs on a weekend that is a different thing, of course, because they do not have hearings on Sundays but the magistrates are there on Saturdays.

Magistrate Strike: We have remand courts on Saturdays and we have an extra legal remand court on Sundays to get rid of our social problems, the drunks and vags that we get in on Sundays as well as Saturdays.

Mr. Pugh: And the cases are actually heard?

Magistrate Strike: Oh, yes, we get rid of them. We now have a situation in Ontario in the matter of bail where perhaps we will come to the point that Mr. Stafford mentioned faster. This question of legal aid is really making a tremendous difference in the matter of bail. In Ottawa we have been lucky in that we have had voluntary legal aid for the last four or five years and therefore it has not changed too much, but everyone who now comes into our courts has counsel and every counsel is asking for bail and continues to ask for it. Every time there is an adjournment they continually ask to have it reduced or to have something done about it and it is before us constantly. I think you are going to see a tremendous change in these areas—and I would not like to have Mr.

Stafford repeat what I say—in the next few years.

Mr. Pugh: I only have one further point, Mr. Chairman. I do not want to belabour this but you did go into it very well, and in a manner which I thought reasonable, the matter of the first person the man appears before having to be highly qualified.

Magistrate Strike: Yes.

Mr. Pugh: I was just wondering about this in regard to bail. You said that anyone who hears a bail application or grants bail has to have a certain knowledge of the man's record and that that bars him from future participation in the case in any way, shape or form. You mentioned it might work a hardship in smaller places where there are not too many magistrates. Suppose a man appears before you on an actual charge and bail has been turned down. You would sort of be fixed with the idea that this man has had his bail turned down and you would obviously know that it has been turned down for certain reasons.

Magistrate Strike: I know another thing as well, that a great deal is done on this matter of identification because, you see, he has been before the J.P. within the last 10 hours. He then comes before me and by this time the man's record has been made available. This does not apply in the more minor cases, it only applies...

Mr. Pugh: That is what I mean, it applies in the more serious ones.

Magistrate Strike: ...in a serious case where a chap is charged with armed robbery, which is a very serious offence. The chances are that the J.P. is not going to set bail right off the bat, he is going to wait and he will then have a chance to talk to crown counsel and counsel for the accused, and if they cannot agree on something so far as the Queen's counsel is concerned then it will come before a magistrate and there will be a full-scale hearing. As I say, when we do that we become disqualified.

• (12:00 noon)

Mr. Pugh: Yes. I feel reasonably happy about the present system on bail. Would you say that it is because of the more serious cases that this Bill is before us and we are here talking about bail in this way? I am talking of those cases where a man has not been able to obtain the required amount of money, or sureties, and he is not out on bail; and he is kept in and goes through the vari-

ous remands until the defence is completed and they are ready to go on. This is really what we are concerned about in this Bill, not the minor cases. In the more serious cases there is less chance of a man getting out because of a prior record, or whatever it may happen to be.

Magistrate Strike: I would agree that that is so. One of the other difficulties we have is that the greater the criminal the better chance he has of getting out, because he may have a syndicate behind him. That is the reason, as I say, that the older I become the more I come to regard it as a matter of either bail or no bail. If from his record, you arrive at the conclusion that a man is criminal and that apparently his chances are that he is not going to change much, then the solution might be to have no bail at all. One gives bail to people who are entitled to bail because actually they have just been charged with an offence, but the real criminal type, no matter what bail you set, will raise it, is the fellow who belongs to the...

Mr. Pugh: If no bail was the issue it really would not require a bill such as this. It would be done by an amendment to the existing law?

Magistrate Strike: That is right; and I do not think that will ever happen. As I say, it is just a conclusion that, the older I grow, the more I come around to. That may eventually be the end of it.

Mr. Pugh: I think I have covered all my questions, sir. Thank you.

Mr. Stafford: May I ask a supplementary question on what Mr. Pugh quoted me on? Perhaps I did not make myself quite clear. Would you agree, as it stands now, that the discretion of the judge having jurisdiction under the Criminal Code is so broad that even a person charged with capital murder could be let out on his own recognizance?

Magistrate Strike: Yes; I would say so.

Mr. Stafford: Therefore, there is nothing more that we can do here to make bail more lenient than as it already exists?

Magistrate Strike: That is right.

Mr. Stafford: Because the administration of justice is in the hands of the provinces there is nothing that this Committee, or even the Parliament of Canada, can do except recommend; is that correct?

Magistrate Strike: That could be so.

Mr. Stafford: In view of the answers to those two questions the whole fault lies within the administration and is totally under provincial jurisdiction?

Magistrate Strike: As Mr. Bull himself said, the whole thing depends on people like crown attorneys and magistrates and justices of the peace. If the discretion is there it is they who have to exercise it, and that presents a problem.

Mr. Stafford: Because it is a matter of provincial jurisdiction, which is out of our hands completely, and since this Bill makes the conditions for bail even worse than those in the existing Criminal Code—and since they are already lenient—it is for the provinces to get these people together to set out rules.

Mr. Gilbert: Mr. Chairman, I would like to tone down the exaggeration contained in the question that Mr. Stafford asked. Does Mr. Strike know of any person charged with capital murder who has been let out on his own recognizance?

Magistrate Strike: No, never.

Mr. Stafford: I did not say it had happened.

Magistrate Strike: It is possible, but it has never been done.

Mr. Gilbert: No. That clarifies that point. Let us talk about summonses now. I am told that there is quite a contrast in the issuing of a summons in England as compared with Canada. In fact, reports indicate that 35 per cent of persons charged with offences—and I am talking about non-indictable offences—are brought to court by the summons, whereas in Toronto the figure is only 8 per cent. Could we have a more widespread use of the summons in Canada?

Magistrate Strike: Yes; I would say that. Although Mr. Stafford does not approve of it, it is improving. In the last year I have noticed that a great many more summonses are being issued than there were before. It is a matter of Crown counsel coming around to that view, too. They are instructing their police departments and the police departments are issuing summonses instead of warrants. However, that is a matter that is not in the hands of magistrates or judges. It rests in the hands, if you will, of Crown counsel and

Crown attorneys who give advice to police departments.

Mr. Gilbert: At the moment you have the accused appearing before a justice of the peace...

Magistrate Strike: It is his discretion whether a summons or a warrant is issued; but in the case of an indictable offence if a justice of the peace is well qualified he will get in touch with the Crown counsel, or the Crown attorney.

Mr. Gilbert: With the exception of impaired driving cases, as Mr. Stafford pointed out, the majority are released on a nominal bail of \$50 or \$100. However, I notice in a report I have in front of me that for

Forgery and uttering. In England, 44 per cent of all persons charged...

are charged by way of summons; whereas in Toronto,

not one person out of 123 prosecuted in Toronto for forgery and uttering was summoned.

That is on forgery and uttering. On indecent exposure, in England, 59 per cent, and in Toronto only 3 per cent.

Magistrate Strike: You will find a larger percentage in this area. I have noticed that quite a number of recent cases of indecent exposure were handled by way of the summons.

The difficulty in forgery and uttering is that we find they are being done in this area by roving bands. They come into an area and have all the equipment to commit the forgery. They have cheque-writing machines. Somebody steals a firm's cheques, and they have the cheque-writing machine. They move from place to place. In a case like that a summons is probably not the answer.

Mr. Gilbert: I think you are right.

Magistrate Strike: That presents a problem.

Mr. Gilbert: Yes.

Magistrate Strike: I have discovered over the last number of years that in this area the forging and uttering are done by gangs which take over the area for a while. That presents a problem. In the case of an ordinary forgery, where a person employed by a company forges the signature of somebody in that same company, I do not see why a

summons could not be issued. But it has not been our experience that that is the type of case we are getting.

Mr. Gilbert: On criminal negligence—and we have had quite a few of those...

Magistrate Strike: You will find that in many criminal negligence cases they are arrested on the spot.

Mr. Gilbert: It says that 93 per cent in England were by way of summons, and that not a single person was summoned out of 48 persons charged in Toronto in 1961.

Mr. Stafford: Do you mean in cases of criminal negligence or the ordinary?

Mr. Gilbert: There is a distinction, as you know, in criminal negligence.

Mr. Stafford: Yes, I know; but there is a section under the Code on criminal negligence. Is that what you are talking about?

Mr. Gilbert: Yes; you are right. As he points out, there is a distinction in England, in this criminal negligence section; and as you know we have had changes here.

All I am saying is that there is more widespread use of the summons in England than there is here.

Magistrate Strike: That is true.

Mr. Gilbert: If we were to give the J.P.'s the power to summon rather than...

Magistrate Strike: They have it.

Mr. Gilbert: They have it but they do not exercise it.

Magistrate Strike: They do not exercise it because when a J.P. gets the more serious type of offence...

Mr. Gilbert: He seeks direction from the Crown?

Magistrate Strike: He gets direction from the Crown counsel. They are actually instructed, in the more serious cases, to get direction from Crown counsel.

Mr. Gilbert: What are your views on the matter question of security in advance? In England they do not demand security; they do not demand the \$100, or \$200 or \$500; all they ask for is the surety rather than the advancing of the security.

Magistrate Strike: Personally I prefer sureties as a means of getting a person back

for his trial if there is any danger that he will not come. I prefer to have two people who are interested in seeing that he gets back. It costs them money if he does not. I prefer surety to cash bail. With cash bail a fellow can skip.

Mr. Gilbert: But the trend, you know, in Ontario—and I am speaking only of Toronto—is more the demand for security in advance than surety.

(12.10 p.m.)

Magistrate Strike: That is true, and I suppose one of the reasons is that it is simpler. It does not create the problems that the other does. Sometimes it is difficult for the person to get the sureties, too. But, as I say, I prefer sureties either with or without security.

Mr. Gilbert: Perhaps I could ask you one more question. At the moment you say that our law or in the determination of bail is on a discretionary basis, with that discretion invested in the magistrate with the hope that he exercises it judicially. Sometimes it is not so exercised because of the direction given by Crown counsel, the magistrate looks down at Crown Counsel and asks: "Well what is the bail?" and the Crown Counsel usually says: "\$1,000 property or \$500 cash, without going into the facts of the background of the accused."

Magistrate Strike: That no longer happens. You will find that the legal aid man for the day now goes into it thoroughly. That has been done in our area for some years. It is voluntary legal aid we have because of our own system. I have always insisted that the Crown just do not say to me that is so much money. If the Crown says to me that it is so much money I ask why. Then we go into the matter of detail.

Mr. Gilbert: It may be because of the volume of cases in Toronto...

Magistrate Strike: It could be.

Mr. Gilbert: ...that they have to do then very quickly. I would ask you to direct your attention to clause 3(a), because the general feeling is that the law as it now stands, is wider than the provisions of this Bill. That subclause reads:

place the person in the custody of designated person or organization agreeing to supervise him;

Is that very often done?

Magistrate Strike: I have done it frequently in the cases of younger people brought before the court. I will say: "Are you people prepared to be responsible for this young man?" and we see that he is placed in his own recognizance under those circumstances. So long as somebody is going to be responsible, then, as a rule, we are satisfied.

Mr. Gilbert: This would be a little wider than the practice at the moment?

Magistrate Strike: I do not...

Mr. Gilbert: Let us look at subclause (b) which reads:

place restrictions on the travel, association, or place of abode of the person during the period of release;

Magistrate Strike: One of the difficulties I see about that one is that of enforcement. I will check on it.

Mr. Gilbert: Yes.

Magistrate Strike: It is difficult, on (b).

Mr. Gilbert: We will examine subclause (c), then:

require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond...

That is not done at the moment.

Magistrate Strike: That is not done at the moment. I can see some merit in that. That could be done now as a matter of discretion, would say.

Mr. Gilbert: Yes; I think you are right on that. Then subclause (d) says:

require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof;...

Magistrate Strike: That is done, yes.

Mr. Gilbert: Paragraph (e) is rather a general one, which reads:

impose any other condition deemed reasonably necessary...

Therefore, there may be a few provisions in his Bill...

Magistrate Strike: May I say that there is contained in clause 4—this has nothing to do with bail—something that is done now, is

done in some cases quite illegally, and which we would like to be able to do. I think there are a couple of decisions which say that we can date back, and there are other decisions to the effect that we cannot. It would be interesting to be able to say that we can—that everybody does it. If a person has been in custody, for two weeks and comes up on a minor charge of shoplifting, or something of that nature, you say, "Well, you have been in long enough now. We sentence you to the time spent in jail." That is done now. It is illegal, but it is done.

Mr. Gilbert: I think that that should be made legal.

Magistrate Strike: I think it should be made legal. I believe there exist two decisions that say it is legal and two or three that say it is not. It would be interesting to have it made legal.

Mr. Gilbert: Thank you very much, Mr. Strike.

The Vice-Chairman: Mr. Mather is next.

Mr. Mather: Mr. Chairman, as you know, I am not a member of this Committee, but I am the author of the Bill before you. I would appreciate a moment or two to discuss a question that I would like to ask.

May I say, very briefly, that I was encouraged to bring this Bill forward for two reasons. The first is, that in the United States last year very similar legislation was enacted, and the President, in signing it, said that the whole intent was to put the emphasis on the character of the accused rather than on his property or money in regard to what type of bail he got, or whether he had to put up bail at all.

The second thing that encouraged me was the study made by Professor Friedland of Toronto, in which he found that some 40 per cent of the accused appearing before the courts in Toronto were unable to raise the bail that had been set for them. He also agreed with the idea that more attention should be paid to the character of the accused and the likelihood of his turning up, than to the money he might have.

I also want to say that so far as I can see there is nothing in the Bill that I propose that would take away from the existing legislation, or limit magistrates in deciding the question of bail in these cases. Before I ask my question I want to emphasize that my whole idea in bringing this Bill to the House and getting it through the Committee was to

direct attention to what seems to me a neglected area of justice administration.

I certainly do not think that my Bill is the best possible proposal, but my question is: Would the witness agree that it is perhaps timely for this Committee to study this type of proposed legislation, particularly when, as I understand it, the Department of Justice is working on omnibus legislation, to be presented to the House later this session, which would, for the first time in many years, make amendments to the Criminal Code in different areas? Would it not be a timely thing for your Committee possibly to make some recommendation to the Justice Department on this subject?

Magistrate Strike: I certainly agree that the recommendations would be very timely, Mr. Mather; and I am also of the opinion that it should be stressed that bail should be a matter of character rather than of money.

In my own career I have considered it in that way—that bail is a matter of character. What you are interested in is having a man back for his trial, and also in being reasonably sure that while he is out he is not going to commit another offence. Taking that into consideration, the whole thing in my mind has always been the matter of his character—is he coming back. These other matters have to be considered, but it certainly would be timely, as you say.

This other omnibus bill which is to come before the House is very important, too, and that point should also be stressed in it, so that it can be brought to the attention of we people who take so long to act.

Mr. Mather: I have one other question, Mr. Chairman. Did I correctly understand the witness to say that he saw merit in clause 4 of the proposed legislation, which reads:

Any time spent in custody at the prison, penitentiary, reformatory or jail previous to the pronouncing of the sentence shall be credited to any person convicted of an offence.

Magistrate Strike: What I was suggesting was that we make legal something that we do now. I would not want it in those words, because, for example, I had a man before me the other day who already had been in custody for some considerable time on another sentence in another court. I had no intention of giving him the amount of the time that he was in jail and had been in jail, in any event. It would make it possible for me to do legally what I now do illegally.

Mr. Mather: I can understand that.

Magistrate Strike: There has been some discussion, or argument, about whether it is legal or not.

Mr. Mather: You approve the principle.

Magistrate Strike: I approve of it in principle, that the person should be given credit for the time he has spent in jail. My own rule of thumb used to be that a person who had been in custody prior to sentence should be given credit for double the amount of the time so spent. I have always thought that a person awaiting trial suffers a little more tension than after the sentence. The rule of thumb used to be if he was in custody for say a month before sentence, to consider that as two months. Therefore, if we were going to sentence him to a year he would get 2 months.

Mr. Mather: Thank you, sir. Those are a my questions.

Magistrate Strike: That was the system that I used to adopt.

• (12:20 p.m.)

Mr. Woolliams: I shall be brief because most of my questions have been answered. I presume that the lawyers around here have always wanted, sir, to cross-examine a magistrate. I know this is your job but I have some ideas about it. I think one thing you have cleared up. I want to congratulate you for bringing the Bill in, legally clear it up. The law is all right. I do not think there is too much wrong with the law. I agree with you. But I think in administering the law there have been difficulties. I like the idea of summons. I think that the problem does not lie with the magistrate or even the Crown prosecutor. I think in a city like Toronto or Vancouver or Montreal or even Calgary, where I come from, the big trouble is that the police find it much easier to incarcerate a fellow to be able to administer their job than to issue a summons, and sometimes are able to get certain statements from him while he is incarcerated so that they can get a conviction.

I think these are practical things. But I think some of the problems that we should look at are these: that the magistrates are over-worked in most major cities; second, when you compare the amount of work they do in the administration of justice in the criminal field, they are underpaid when 31

into consideration the salaries paid county and district court and supreme court judges. I think those are some of the things that must be looked at. After all, the bail, the granting of bail—I agree with everybody here and I agree with you, sir—is a matter of discretion. The law is all right, but if the discretion is not exercised properly, and how can it be exercised properly—I am going to ask you that question—if magistrates are pushed to such a position that they are deciding 200 cases sometimes in a morning? At least two magistrates I know have to do that type of work, so how can they possibly give the time when they are asked to do that amount of work? They are the most over-worked judges on the Bench and my sympathy is all with them. I have not always said that when I am before them but basically I own deep my sympathy is with the magistrates because they are over-worked and they are rushed. I think this is some of the problem. What do you think of that?

Magistrate Strike: I agree with everything you said, sir, especially about the salary.

Mr. Woolliams: I think that is really why you brought the Bill in; you thought there was something wrong with the law as a layman. The law is good but the fact is the people that are applying the law—it is not always their fault—are not using the kind of discretion necessary that the law provides. It has become a rule of the people and not a rule of the law and when you run into that you always get abuse.

Mr. Mather: Mr. Chairman, may I just say that I am not a lawyer but I have great sympathy for the lawyers.

Mr. Stafford: You include the magistrates.

Mr. Mather: Well, that was already considered.

The Vice-Chairman: Are there any further questions?

Mr. McQuaid: Magistrate Strike, I have just one question. I am surprised, actually, at our suggestion that the jurisdiction of the police in granting bail should be extended. I believe you said that, did you not?

Magistrate Strike: Only in summary convictions matters and some penal statutes, federal as well as provincial. I do not want to have it increased in anything like an indictable offence or anything of the kind but just a minor types of offences.

Mr. McQuaid: Let us take, for example, the case of a man picked up for impaired driving. I would judge from what is said here today that the practice with respect to impaired driving varies very greatly across this country. In the province that I come from, instructions have gone out from the attorney general's department that every man picked up for impaired driving is to be arrested, and every man who is picked up for impaired driving is immediately arrested by the police. This means that that man the next morning has to arrange bail. In this matter of bail, my experience has been that you run up against a certain amount of resistance from the police; the police are inclined to not let him out on bail.

Magistrate Strike: They cannot grant bail on impaired driving. Actually, that is an indictable offence that may be tried summarily at the election of the Crown counsel, so the police are not permitted to grant bail on their own. That is the reason that we have to have these JPs on duty until at least 12 o'clock at night.

Mr. McQuaid: But you would suggest that in cases where the police now have the discretion to grant bail this should be enlarged.

Magistrate Strike: They could enlarge it to some federal statutes.

Mr. McQuaid: I see. Did I understand you to say, sir, that in Ontario there is a law which says that all JPs must be trained before they can be...

Magistrate Strike: No, no. Under the Justices of the Peace Act, it says they may not act in any judicial capacity—this is paraphrasing it—unless they are instructed by the magistrates having jurisdiction over them.

Mr. McQuaid: Is it the practice of the magistrate to make sure that he is trained to some extent before he extends that power to him?

Magistrate Strike: That is our responsibility. Before a JP is appointed, we must train him. He must go before a county judge and be questioned by the county judge as to his qualifications.

Mr. McQuaid: I would take it, then, that every justice of the peace acting in Ontario today in the matter of bail has been trained to some extent.

Magistrate Strike: Otherwise he is not authorized to act. When I say this in the matter of training, I can only give the example of my own area because I know this: that no justice of the peace can grant bail unless the magistrate in that area has authorized him to do it or authorized him to exercise a judicial function.

Mr. McQuaid: But that is a provincial statute which applies all over the Province of Ontario.

Magistrate Strike: That is in the Justices of the Peace Act.

Mr. McQuaid: It is applicable all over the Province of Ontario.

Magistrate Strike: That is right. That is in the Justices of the Peace Act. I have to authorize in writing—I authorize all my JPs in writing—as to what they may do judicially.

Mr. McQuaid: I think if every province would pass a provincial statute of that kind we might get around much of the difficulty that we are experiencing now so far as bail is concerned. I think it is the general consensus here this morning that the provisions with respect to bail are adequate enough, but as somebody has already said, it is the administration of the bail, administration of the law, that we are having difficulty with. I feel that faulty administration, particularly in my area, is due to the fact that JPs are fixing bail who do not know the first thing about it and unfortunately they are influenced a great deal by the police. The police say to the JP: "This man should not be let out unless he puts up \$100 cash bail; we will not accept anything else." And the JP follows these instructions.

Mr. Stafford: I have one more question, further to Mr. McQuaid's question and your answer that police officers possibly should be given the right to set bail or that that privi-

lege should be extended. In reality that discretion exists with police officers today because instead of arresting the accused they merely have to summons them.

Magistrate Strike: That is right.

Mr. Stafford: So, it is exactly the same thing. Just one other point about clause 4 of this Bill. Since every magistrate that I have ever seen takes clause 4 into consideration, in reality it would make the penalty of the accused or his record look even greater would it not, on the face of it, than it does now?

Magistrate Strike: You mean it would look like a longer term?

Mr. Stafford: Yes, it would make it look worse for the accused. Then going on to clause 3, subclause (c) on page 2 of the Bill those terms used which Mr. Gilbert just read "appearance bond...in the registry of the court" are not defined in either this Bill or the Criminal Code; so that would be another amendment necessary.

Magistrate Strike: I would say so. The way bail is handled now in our court is that it is placed through a separate bail bank account. It is just a bank account for bail, and nothing else.

The Vice-Chairman: Well, gentlemen, there are no further questions, I shall express the appreciation of this Committee to our distinguished witness for having taken his valuable time and having consented to appear before this Committee to let us profit from his vast experience on the Bench. It was very interesting and useful and certainly to be taken into consideration. We are very grateful to you, sir.

Magistrate Strike: Thank you.

The Vice-Chairman: This Committee will now adjourn until Thursday, November 16.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 9

THURSDAY, NOVEMBER 16, 1967

RESPECTING

The subject-matter of Bill C-4,
An Act concerning reform of the bail system.

WITNESS:

Professor M. L. Friedland, Associate Professor, Faculty of Law,
University of Toronto.

ROGER DUHAMEL, F.R.S.C.

QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,

Mr. Guay,
Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,

Mr. Otto,
Mr. Pugh,
Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, November 16, 1967.

(9)

The Standing Committee on Justice and Legal Affairs met at 11.15 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, MacEwan, McQuaid, Stafford, Tolmie, Wahn, Whelan, and Mr. Woolliams (12).

Also present: Mr. Mather, M.P.

In attendance: Professor M. L. Friedland.

The Committee resumed its consideration of the subject-matter of Bill C-4 (*An Act concerning reform of the bail system*).

The Chairman introduced the witness, Professor Martin L. Friedland, Associate Professor, Faculty of Law, University of Toronto.

Professor Friedland addressed the Committee, stating his views and certain of his own recommendations in connection with the subject-matter of Bill C-4. The witness was questioned for the balance of the meeting.

The Chairman thanked Professor Friedland for his appearance and for sharing his knowledge of the subject with the Members of the Committee.

The Chairman announced that the Committee will be considering the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*), during the next two meetings. On Tuesday, November 21, 1967, the witness will be Dr. Gregory Fraser (Clinic Director—Out Patient), Alcohol and Drug Addiction Research Foundation, Toronto, Ontario. On Thursday, November 23, 1967, the witness will be Dr. J. Naiman, Psychiatrist, Jewish General Hospital, Montreal, Quebec.

On a motion by Mr. Stafford, seconded by Mr. Gilbert,

Resolved,—That reasonable living and travelling expenses be paid to Dr. Gregory Fraser and Dr. J. Naiman, who have been called to appear before this Committee in the matter of Bill C-96, on November 21, 1967, and November 23, 1967, respectively.

The Committee adjourned at 1.00 p.m., until Tuesday, November 21, 1967 at 11.00 a.m.

Hugh R. Stewart,

Clerk of the Committee.

not being uniformly and properly interpreted across the country.

• (11:20 a.m.)

Mr. Woolliams: Yes; but that does not make the law weak.

Professor Friedland: Under the legislature of Canada the federal government has an obligation not just to enact the law but to ensure, to the extent that it can, that it is properly administered. If, by simple amendments, it can set standards and give direction to those administering the law across Canada I think it should do so. I may be getting into a somewhat broader issue than this particular one, but it is an important issue. There is a large area in which the federal government should move into the administration of the law to ensure that it is properly administered, by setting the standards in the Criminal Code. This is true not just of bail practices but in areas of police practices. It should be setting standards and giving guidance through legislation and by having officials ensure that it is being properly observed. This is true, for example, in legal aid. It may be true in establishing sentencing standards. This is going beyond what we have always thought the Criminal Code should do, which is to establish a section.

At this very moment there is another committee dealing with the matter of abortion which, in a philosophical sense, is very close to what you are dealing with here. Perhaps I am straying too far from the subject matter of the Bill, but many lawyers say that the abortion law does not need reform; that if they only looked at the Criminal Code and understood the cases properly everything would be fine; but that there is this uneven application of the law across Canada. Some hospitals interpret it in one way, and others in another, even although you say that of the interpretation the law is clear.

In fact, the same has happened with the administration of bail across Canada.

Some magistrates interpret it one way and some another way. I agree with you, sir, that on my interpretation of the law—and this is what I argue in my book—the Criminal Code does not envisage security in advance. The provisions of our Criminal Code come from the English law which looks to sureties, and the supervision of sureties, rather than to money, for ensuring that the accused will attend his trial. The introduction of money into our bail system was an unjustifiable gloss on the bail system by using the American technique of security.

But having said that, we still find across the country many magistrates who think of bail in terms of money. It is a case of five hundred dollars' bail for the offence, and they do not care by whom or how it is put up. Bill C-4 has the advantage of telling those administering the law how they should do it. It says that you start without requiring security in advance; that people should be released on their own recognizance, if possible; and then it sets further stages if the first would not be successful.

It really just elaborates what is presently the law under the Criminal Code but is not being properly administered.

Mr. Woolliams: Perhaps we can come to grips with that? You can even apply for bail in the case of an indictable offence where a man is arrested.

Professor Friedland: Even in capital murder you can.

Mr. Woolliams: Yes, that is right; but on an indictable offence, provided you can get a magistrate at the proper time you can always make an application for bail. If a magistrate will not interpret the law properly and know this is difficult—you can go to a high court and get bail.

I still say that there is nothing wrong with the law. If the magistrate is not interpreting it properly you finally establish a precedent and the magistrate will then start interpreting it according to the high court or the appeal court. I am merely pointing out, as trial lawyer, of which I have had some experience, and as confirmed by the magistrate who gave evidence of our last session and by one of our very learned Crown counsel from this province, that the law is there. It is a question of administering it.

First of all, these magistrates, as I sure you will agree are overworked; secondly they are sometimes political appointments; and thirdly, I think they are underpaid. You may think that they are all political appointments. In our province you cannot find lawyers that are Social Credit, so we have to appoint them; but sometimes they are political appointments. Provided they do their work properly the law is all right. It is the administration of the law that is causing the difficulty and has prompted this good member of Parliament to bring in this Bill. That is why I think we should come to grips with the subject.

We could talk for days about this and that weakness, but the law is there. Unless you can say that section such-and-such of the Code should be amended in some way, you are going to have to direct your attention to the administration. There it may be poor interpretation, but, basically, the law is there, whereby a man can walk out of jail on his own recognizance whatever his crime may be—as my good friend pointed out, even that of murder, if they want to interpret it that way.

Mr. Mather: Mr. Chairman, on a point of privilege. It seems to me we would make more progress if we followed your suggestion and had the witness outline some of the situations getting into detailed questions.

The Chairman: Probably the best approach for the benefit of the Committee would be to ask Professor Friedland to address himself to that phase of it, that the law may be all right but that the administration is bad. The law can be proved, because you can in the law give directions to the magistrates, or to the judicial officers who deal with it, on how they should approach the problem of bail. Therefore, I will leave it to you to carry on.

Professor Friedland: Perhaps, Mr. Chairman, I should say something about other areas, connected with this central issue, which require further consideration and change at the same time that you might be considering other changes. This will perhaps illustrate that the law needs to be changed; that it is not wholly adequate, as might be suggested.

An hon. Member: Hear, hear.

Professor Friedland: The first area requiring serious consideration is that of the summons. The summons is not used in Canada with anything like the frequency with which it is used in England. This is central to the bail issue, because if a person is summoned rather than arrested one does not have to get into the whole question of bail. Therefore, as part of the technique for ensuring that people are not being kept in custody unnecessarily we should encourage greater use of the summons to eliminate the later problems. Secondly, we should encourage, and provide techniques for, allowing a person to be released prior to the first court appearance. There are grave deficiencies there. In Toronto we found that on the summons issue 92 per cent of those charged with Criminal Code offences were arrested rather than summoned

and the vast majority of those who were arrested, approximately 90 per cent, were kept in custody until their first court appearance, which usually meant a great number of hours, perhaps 10 hours or longer, until their first court appearance. As part of the plan to change our pre-trial procedure, Mr. Chairman, we should look to these areas too because they are all related with the bail problem. If you wish, I could say something on the summons.

• (11:30 a.m.)

The Chairman: Why do you not just proceed in the way that you want to develop the subject matter? We will ask the questions after you have developed the subject on this.

Professor Friedland: There are a great number of changes in the Criminal Code which, if enacted, would encourage and provide for a greater use of the summons.

For example, if an officer has reasonable and probable grounds to believe that an indictable offence has been committed, he may arrest without a warrant, even though it may be unreasonable for him to arrest rather than to summon; and so one major but very simple amendment to the Code would be to amend Section 435 of the Code to make the police officer's right to arrest without a warrant, not only dependent upon his having reasonable and probable grounds for believing that an offence has been committed, but also that it is reasonable for him to arrest rather than to summon. A fair number of other changes could be introduced into the Criminal Code. These are simple changes but yet unless these are made we will find that the summons will not be used extensively.

Fingerprints, Mr. Chairman, are very important for the police. All police officers recognize this. I think most people who have studied police practices realize that police require fingerprints; yet the Identification of Criminals Act, which is the legal authorization for obtaining fingerprints, limits the right to print to persons who are in custody. If the police then wish to obtain fingerprints which they must have, they have to arrest the person. So a simple amendment to the Identification of Criminals Act should be made to provide that if a person is summoned, the police can still obtain his fingerprints by requiring him to appear at a certain time or within a certain period of time in order to give his fingerprints to the police.

There are a great number of minor but crucial amendments like this that have to be made to the Criminal Code before the summons problem can be properly dealt with. At the present time there is no penalty for failure to obey a summons. This detracts from its usefulness. There is no penalty for giving a false name. Again, this detracts from its usefulness. There is no authority for the police to issue summonses without going before a Justice of the Peace. In many provinces they can do this for provincial offences. This would encourage greater use of the summons.

Turning then, Mr. Chairman, to the area of bail prior to the first court appearance. There are a number of changes that should be made there in order to encourage the early release of accused persons. I believe Mr. Bull said in his submission that this is an area which greatly concerned him, and I agree with this because at the present time, before a person can be released prior to his first court appearance, you have to obtain a Justice of the Peace who has to appear at the police station and release the person. In many jurisdictions it is difficult to obtain a Justice of the Peace on short notice.

The solution to this adopted in England and in many of the provinces for provincial offences is the simple technique of allowing the senior police officers to set and accept bail for this brief period, or this period after arrest and prior to the first court appearance. It has operated in England, I believe, since the early 1800's without any infringement on the accused's liberty. It is only to the advantage of the accused because it does not eliminate the Justice of the Peace. It simply provides that a police officer, in addition to the Justice of the Peace, can release an accused person.

Mr. Stafford: With reference to the Criminal Code, sir, what offences did you have in mind?

Professor Friedland: Certainly you would want to have it for summary conviction offences.

Mr. Stafford: But we do that under the Summary Convictions Act already—a police officer without any Justice of the Peace at all—of the province.

Professor Friedland: Yes, but not for summary conviction offences under the Code.

Mr. Stafford: Not under the Code, no.

Professor Friedland: You are quite right. If a person is charged with impaired driving under the Code, before he can be released a Justice of the Peace would have to appear unless in that particular municipality they work out a semi-illegal scheme, which is not desirable, to allow his release and then document it afterwards.

Mr. Stafford: But the point Mr. Woolliam was getting at here is not that. It was the fact that there is no compulsion in the Criminal Code for the police to arrest a man in the first place; therefore, it amounts to the same thing, does it not? They do not have to arrest him.

Professor Friedland: Yes.

Mr. Stafford: And therefore it is the administration of the province. This is what we cannot quite understand.

Professor Friedland: There may be very good reasons for the police officers to arrest a person. For example, in impaired driving they may wish to remove him from the possibility of continuing his offence, and yet they may wish, after he has sobered up, to release him. Or it may be that they are unsure of his identity and therefore arrest him but yet they wish to release him. There should be authority in the Code either for the senior police officers to release the accused on bail or else to release him and then summon him. The Code is not clear on this. As in all these matters, you will find that in one province people will argue strongly one way about the interpretation of the Code, and in another province they will argue strongly in another way. On that simple issue, can the police release a person that they have arrested and booked? We turn to section 438 of the Code subsection (2) and can see why different police officers give different opinions on the Section 438, subsection (2) states:

A peace officer who receives delivery of and detains a person who has been arrested without warrant or who arrests a person with or without warrant shall in accordance with the following provisions, take or cause that person to be taken before a justice...

Many police officers say: If the Code says that having arrested a person without a warrant we shall take him before a Justice of the Peace, and in the previous subsection uses the word "may", what authority do we have to release a person who has been arrested?" That is not a bad argument.

happen not to agree with it and I can show a Quebec Court of Appeal case which is otherwise; yet, there is a police manual which raises this particular point and shows that the administration of the law on this point is unclear. I think that there is an obligation on the drafters of the Criminal Code, particularly when there is no legal obligation for magistrates and those administering the law, as you point out, to be legally trained to make it clear what the law means. There is hardly a section in this area that I can turn to in which I cannot give, as all lawyers can, arguments either way which shows that the law is in doubt.

(11:40 a.m.)

Mr. Woolliams: May I put this to you, and I am thinking of Dean Cronkite of the Saskatchewan Law School: he said—and I think you might agree with me he is a very able dean—that you cannot draw anything so exact that it is not subject to many interpretations. That is what we have courts for—to interpret what Parliament intended. Now as early as possible, we should try to draft our legislation so there is no ambiguity, but is this not almost impossible when one group of human beings look at it one way and another group of human beings look at it another? That is why you have courts.

Professor Friedland: There is an obligation, in fact, to enact the law as clearly as possible. There are some laws which are necessarily vague in order to allow courts to interpret them. But this is an area of the law which rarely gets up to a higher court. I do not know of any Supreme Court of Canada decision dealing with this whole area.

The number of cases in which a bail application has been reviewed by the high court amounts in any province to two, three or four a year, and yet there are thousands and thousands of people who are being held in custody pending their trial. So, if you look at the administration of the law, you will find that a large number of people are being kept in custody until their first court appearance.

As I pointed out before, 90 per cent of those charged with Criminal Code offences were arrested, less than 10 per cent were summoned; this is in the sample of over six thousand cases. Approximately 85 per cent of those arrested were kept in police custody until their first court appearance, many for substantial periods of time.

In one division station analysed—it was one of our largest division stations in Toronto—over 80 per cent of all those booked between seven in the morning and midnight were kept in police custody for over 10 hours before their first court appearance. This is a tremendous amount of custody we are using, even though it may be that the law is not as bad as some may make it out to be. If we have a situation in which the law is unclear and the law is not working well; the administration of the law is uneven across Canada; there are those that do not apply the law properly and there are obvious changes that should be made to make the law better, surely the Government of Canada has an obligation to ensure that the Criminal Code is clear even if it does not want to get into the field of the administration of justice by the actual supervision of how police forces and courts operate.

The government—and this has been a pattern for some time—has felt that their obligation ends with the enactment of legislation. Yet, the actual legislation and the administration of the legislation are all one. You cannot separate the two. In no other jurisdiction of the world do we find this division of authority between one enacting the law who says, "Well, what people do with it is not our concern", and another jurisdiction that administers the law and says, "But we have no concern over what the law says". In England the two are interrelated.

In the United States the two are interrelated when you are dealing with the federal structure and when you are dealing with the state structure. But in Canada they are unrelated and in the absence of judicial decisions which set standards—and this is an important consideration—some one has to do so.

The Supreme Court of the United States, has taken a very active role in the administration of the criminal law. In the field of search and seizure, they set standards for all the state courts and the state legislatures to follow. In the field of legal aid, it was a Supreme Court case of *Gideon V. Wainwright* which established uniform standards throughout the United States. It has been the United States Supreme Court which time after time has said: this is the minimum standard that we want to apply throughout the United States.

In Canada for one reason or another our courts have not taken the same approach to the function of the judiciary, and as a result

no one has done very much about many of these problems. The federal government says: "But the law is there"; the provinces say: "We just administer the law," and the courts stay clear of all these areas. My suggestion, Mr. Chairman, is that the federal government should take a greater interest in how the law is operating, examine the way the law is operating and set out standards for those administering the law to follow.

The Chairman: What about communication between the various law officers of the province and dominion; Crown attorneys, magistrates. Do they not take action along the lines you are suggesting?

Professor Friedland: So far as I know, Mr. Chairman, there is no national magistrate's association. There is a very strong Ontario magistrate's association which is attempting to change practice in this particular area, but there are no meetings of magistrates that I know of from across Canada. The federal government has not become involved in that aspect of it and the individual provinces have done nothing on a national basis. Yet, it is in the magistrate's courts, as we all know that 95 per cent of all indictable offences and all summary offences are tried, a tremendously wide jurisdiction. A magistrate can sentence a person to life imprisonment and yet there is no direction from the federal government, in many of these areas how he is to operate.

Mr. Woolliams: In section 451 (a) (iii) is the power of a magistrate or a justice to grant bail before commitment for trial. This says very clearly, "accused can enter into his own recognizance" and then it also says under section 463 (a) (5): "a justice may issue a discharge under this section". A person can enter into his own recognizance. So basically under both those sections it could be done. Now, what you are suggesting I presume is that it could be spelled out a little clearer so he would exercise more flexibility in his discretion. Is that what you really mean?

Professor Friedland: I do not disagree with your interpretation of the Code. In my book, I say exactly what you say. I say the concept of bail which is advocated here is not a new one; it is the one envisaged by the Canadian Criminal Code and the one presently in operation in England.

The practice in Toronto of requiring security in advance is simply an undesirable and unjustifiable gloss on the traditional concept of bail. I think no harm would come from

giving direction and guidance to magistrates that the legislature intends the section to mean this, and it is a legislative direction that to the extent possible security in advance should not be part of our system of justice, and if it is reasonable to do so under the circumstances, a person should be released on his own recognizance. If that is unreasonable, then conditions can be imposed and here are some of the conditions that can be imposed.

• (11:50 a.m.)

I might comment on the Bill, Mr. Chairman. There are a number of criticisms that one could make of the actual Bill which, I think, are inevitable when you take an American bill, an American act, and attempt to introduce it into another jurisdiction. I hope I am not being misunderstood. The principle of the Bill, which is to attempt to do away with security in advance is very sound, and the legislative enactment which states that in some way would be desirable.

One deficiency in the Bill is that it does not appear to allow the magistrate to deny bail. This is understandable in the United States where their constitutional protection provides that, except in capital cases, bail must be granted, but this has not been the legal tradition in England nor in Canada, and so in Canada it has been understood that if it is justifiable, there are cases in which bail may be denied. So, for example, under this Bill, to take a recent case which is still pending—I do not know whether it is proper to mention it—if Mr. Hal Banks is to be tried in Canada for perjury he would be released under this Bill. Conditions would be imposed but there would be no discretion in that case to deny bail. And yet there are cases in which traditionally courts have denied bail for a person, depending upon certain circumstances.

In any redraft of this legislation, if such is deemed necessary, it might be considered desirable to attempt to set out the circumstances—this is a very difficult task—in which the magistrate can deny bail, and give some guidance to the magistrate on these particular matters.

The Chairman: That is to improve the administration of it?

Professor Friedland: To say in what circumstances bail should be denied. For example to take one of the more difficult areas; there is uncertainty in many provinces whether a person should be denied bail pending trial.

because of his past record. In some provinces they say this is a proper consideration; in some provinces they say this is not a consideration. In England they say you can deny bail under these circumstances. You have a very uneven application of the law across Canada, and it would be desirable with the legislation to meet this problem head-on and decide under what circumstances a person would be deprived of his liberty pending trial because of the danger of his committing offences while he is awaiting trial.

This particular reason for denying bail can easily be abused when you consider that what in fact is being done when the court says: "We will deny bail under these circumstances because of the danger that the accused may repeat his offence," is it assumes he has already committed the offence with which he is charged, which is a denial of the presumption of innocence.

This is a difficult area; I do not know if we want to get into it now. It is a difficult problem in setting out the standards to be applied. It may be that you would wish to give the magistrate a discretion to deny bail outright if a person has previously been convicted of the offence of bail jumping. It might be that you would wish to give the magistrate the discretion to deny bail completely if the accused had been convicted of a serious offence while awaiting trial for a serious offence. It would be very difficult to put these out in legislation, yet it might increase the effectiveness of the legislation and ensure that it is properly administered.

I was commenting, Mr. Chairman, on some of the deficiencies in Bill C-4. A second nature deficiency—the first was that it does not allow the magistrate any discretion to deny bail except in certain cases—is that it excludes from the operation of Bill C-4 those liable to life imprisonment. This includes a lot of offences which should come within the bill.

Mr. Stafford: Robbery and rape, or things like that.

Professor Friedland: Well, are not robbery and rape...

Mr. Stafford: Well, actually, robbery, I would say.

Professor Friedland: Ordinary robbery, threatening a person with your fist and taking money from him would take the person outside in this case.

Mr. Stafford: I think Mr. Woolliams is getting at the point that this is much tougher than our Code is now.

Professor Friedland: Yes, it is, in that respect. I am not sure what you would do with the cases that are outside of this Bill. Does that mean you can deny bail in those cases in which even the law then would not be operating as effectively as it does at present?

Mr. Woolliams: Certainly I would rather operate under the Code as it is than under the Bill. On that you and I are in full accord.

Professor Friedland: But I do not wish to detract from...

The Chairman: Mr. Woolliams, the whole Committee would like your suggestion on how we can improve the administration by any report that we send back to the House, or recommendation to the House.

Mr. Mather: If Mr. Friedland has finished his statement, I have a question I would like to ask.

The Chairman: Do you want to ask your question now?

Mr. Mather: I am very pleased with the witness and the points that he has raised and the whole discussion. I point out, however, that the main purpose of the Bill as set out in the explanatory note is simply to assure that all persons, regardless of financial status, shall not needlessly be detained pending their appearance to answer charges, and so on.

It is argued by some that the present regulations provide for the release of people under very similar terms, but my original interest in this subject sprang from the fact that, as I understand it, a very large number of people to whom release is made available by bail are quite unable to raise the bail. This one law for the poor and another for the rich and is the principle I am trying to bring forward in what I propose. I think in your own study, Professor, you found that in Toronto something like a majority of people who had relief offered to them on a bail basis were unable to take advantage of it.

• (12:00 noon)

Professor Friedland: Yes, sir. The law we are discussing in this committee room was not being properly administered in Toronto as it is not properly administered in many areas in Canada. They were thinking of bail

in terms of money, so the magistrates would say, "You are charged as a common prostitute under section 164(c). Bail will be \$500". They were not concerned how the person raised that money and, as a result of this, \$500 would be put up. The result of requiring money rather than surety is that many people were unable to be released, and in our study about 60 per cent of those who had bail set were unable to raise it until the bail was lowered or until their trial or until they pleaded guilty. This is quite easy to understand. It is one thing to say to a person, "Find someone who will sign a document pledging that if you do not show up they will owe a debt to the government of \$500, in which event they will have to sell their car and raise the money". It is another thing to say to a person, "Find someone who will right now sell his car before you will be released". It is very difficult to raise \$500 in a short space of time. It is not that difficult to find someone who will pledge \$500 if you do not show up. The Criminal Code envisages the latter system; that is, a system in which no one puts up anything. The surety just promises to be responsible for that amount if you do not show up. However the administration has been, and in many areas still is, that when bail is set at \$500 what they want is money or real property and as a result of the way the law has been administered many people have not been released pending trial.

Mr. Mather: If I may ask one further question, Mr. Chairman. You say there have been a great many cases in the Toronto area where an accused although the release is available to him if bail, can be provided in monetary terms, would be held without bail, incarcerated, or they would borrow money to secure their bail and effect their release. In either event these circumstances might have an effect on the outcome of their trial or on their ability to present their case. Would that be true?

Professor Friedland: Yes, that is certainly true. It is something that I have not gone into here, which perhaps I should have. I assumed from the line of questioning that the Committee did not see any merit in a system of security in advance and wished to maintain the position envisaged by the Criminal Code which is that security in advance is not required. However, as you point out, the danger in security in advance is, firstly, that many people are not released because they are unable to raise the bail. Secondly, because money is required this brings into operation professional moneylenders and

bondsmen who will put up money for a fee. The standard fee is usually 15 per cent, so in order to raise \$500 until your trial three weeks later you have to pay \$75.

Of course this whole routine is quite ridiculous because it does not achieve anything. All it means is that some moneylender obtains \$75. It does not insure that you will show up for trial because, in fact, you do not get the money back. You have paid the \$75 and you do not get that back. You do not lose anything if you do not show up. You show up in most cases but for other reasons, not because there is any financial advantage in your showing up. The professional moneylender does not take an interest in your particular case if you do not show up because he treats it as a business loss. In any event, I do not think we would want the moneylender to go after the people who abscond and haul them back into court, this is the job of the police.

The system of requiring security in advance, which brings in professional bondsmen and moneylenders tends to raise the level of the bail because the magistrates in some jurisdictions know that moneylenders operate and therefore the amount that is required tends to rise. It operates to the prejudice of the poor, the innocent and those who do not know the ropes, but it operates to the advantage of the professional criminal who knows who the professional moneylender is and can easily arrange to get out. Therefore the poor and the innocent may be the ones who suffer under this system.

As you point out, Mr. Mather, the effect of custody pending trial may be quite serious. It is very difficult to document this statistically. I attempted to do so in my book. It is for you to determine whether I did so, but on common sense grounds you can understand that custody pending trial can be very serious. It may incline people who perhaps are innocent to plead guilty to get it over with. It makes it difficult for an accused person to earn money to pay for a lawyer. It makes it difficult for a person in custody to track down witnesses. It makes it difficult for him to bring in character evidence because in some cases you have to persuade people to come and give evidence on your behalf. It prejudices an accused in custody if he does not have a job. There is nothing better for a defence lawyer who is arguing against sending a person to jail than to say that the person has had a job, he has been working for the last two months and it would be

ragic if he were returned to jail. It is much easier to send a person back to jail who already is in jail and who looks a little bit like a jailbird and does not have a job.

Mr. Stafford: They all look better when they have been there for a few days!

Professor Friedland: That is right. I think in the vast majority of cases that a defence lawyer who wishes to argue a sentence would feel that it is more of an advantage to have the accused not in custody than in custody at the time of sentence. There may be the odd case in which it is an advantage to say, "But he has already served three weeks in custody. Is that not punishment enough?" Certainly in the serious cases, where it is a question of a substantial jail term, most lawyers would rather not have the person in custody.

Mr. Woolliams: Mind you, those are very ad circumstances and I agree with you wholeheartedly, but if a magistrate or judge could let him out on his own recognizance either before or after he is committed for trial, he could do so. There may be room for some improvement in order to spell out a few things but does it not come back to the fact that they are not properly administering the law? It is a question which the attorneys general of the various provinces should take a look at—perhaps at the suggestion of the federal government—but basically the administration of justice falls under the provincial governments.

Mr. Stafford: Too many magistrates and judges depend solely on what the crown attorney has to say. Did you find that to be true in many cases? I know almost everywhere in south-western Ontario if the Crown objects violently to an accused getting out on bail he usually does not get out.

Mr. Gilbert: I think it is more important to get it codified and set out in the code than to depend on the administration.

Mr. Stafford: But every time you put an exception in there you are putting teeth into keeping him in jail. Another point I wanted to ask you about when you were going over this is whether the magistrate should hear his argument. Do you say the magistrate should hear that same case when he later finds out what the record of the accused is or should he wait until another magistrate in a busy world of magistrates is available to come from another city 50 miles away?

• (12.10 p.m.)

Mr. Friedland: That is a very important question. It is not that important in the large cities where magistrates will forget who the accused are, and it may come up before another magistrate. But in an area where there is only one magistrate, he has difficulty knowing what to do because in order to make an intelligent bail decision he should know about the background of the accused. Yet, if he knows about the background of the accused, he is prejudiced if he tries the case.

One technique that might be of assistance there—I have not mentioned this yet—is to have another body, apart from the police and the Crown attorney or the magistrate, doing a certain amount of preliminary fact finding in the case. This was the technique employed by the Vera Foundation in their Manhattan Bail Project in New York. It is presently the scheme that is being tried in Toronto by the Amicus Foundation.

An hon. Member: How do you spell that word?

Professor Friedland: Amicus; it is run by the Downsview Rotary Club. The scheme works in this way: some independent person—in Toronto it is law students but it could be probation officers, or it could be anyone—makes an assessment of the particular case looking into such things as whether the person has a job, his previous record, his roots in the community, and such factors as that, and then makes a recommendation to the magistrate as to whether this person should be released on his own recognizance or not.

This meets a number of objections. It meets your point, which is that otherwise the magistrate would know too much about the case, and it meets your point which is that magistrates are busy and do not have time to delve into the bail question, and it provides someone apart from the crown attorney and the magistrate to look into it. With a legal aid system such as we have in Ontario with the Duty Counsel, the Duty Counsel provide a useful service. They are somewhat independent even though they are on the defence side, but they are not identified with that particular accused, and they have been providing the magistrates throughout Ontario with a fair amount of help on the bail question.

I do not think that there is any other jurisdiction in Canada yet that has Duty Counsel, and so it is the magistrate himself

who has to hear these matters. So it might be quite useful for the court to have someone such as a probation officer doing a preliminary assessment on each case to make a recommendation to the magistrate on the bail question.

Mr. Chairman, I have been pointing out a certain number of deficiencies in the Bill. I am not doing this to attack the Bill, which I think is sound in principle, but rather to ensure that it is not in fact enacted in its present form. I doubt if Mr. Mather would wish it to be enacted in its present form. For one thing, I think it has to be—and I have mentioned a number of points—integrated into the Criminal Code. You cannot have, set off aside, another act which is so important to the Criminal Code when all lawyers and police officers operate with the Criminal Code. So that for ease of administration it should be in the Criminal Code.

Then as a matter of drafting, the language used in many cases is American language and American words not used in Canada such as "appearance bond" and "bail bond". Obviously these would have to be changed to make it consistent with the wording used in the Code.

It also adopts American techniques which can only be understood in the context of the American system of legalized professional bondsmen. For example, clause 3, subclause (1) (c) and (d) really envisage professional bondsmen; for example, (d) says:

require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof...

This envisages insurance companies or bail bonding companies that would be considered solvent becoming the bondsmen. Since it is illegal in other sections of the Criminal Code to have professional bonding companies, we would have to exclude that from the operation of the Bill, clause 3(1)(d).

The Chairman: I think what the Committee are interested in, just as is Mr. Mather, the sponsor of the Bill, is the principle of people being kept in detention prior to trial. What we want to know is how we can improve the present sections of the Code and what amendments you might suggest that we could agree on and recommend to the House, with improvements. It would effect that purpose, because none of us wants to see people in jail who should not be in jail. We realize that the administration may be partly responsible for that. They have admitted that

it can be that the law is all right, but the administration of it is far from perfect. That is what you had in mind, Mr. Mather?

Mr. Mather: Very much so; I think I have indicated before that my whole purpose in bringing this forward was to get the subject matter discussed by your Committee with the hope that this Committee might see fit to make some recommendation to the House, to understand that the Department of Justice at this time is drafting an omnibus bill to reform or amend the Criminal Code. It seemed to me that the area of bail might be an area that they could well look at.

Mr. Gilbert: This is precisely what Professor Friedland has been doing, Mr. Chairman. He has been setting forth the more widespread use of the summons.

The Chairman: We are not here just to criticize the Bill; that is what I mean. We are to get to the principle of the subject matter.

Professor Friedland: I have saved my criticism of the Bill until the end, because I did not want to detract from the importance of the general area by minute criticism. But I think it would be useful, Mr. Chairman, if this Committee would recommend that a wide review of our pre-trial practices be undertaken with a view to legislation to meet some of the problems in the administration of the bail system: firstly, that the sections of the Criminal Code which now discourage the use of the summons be amended, and other sections be changed and amended to encourage a widespread use of the summons. That is, if you want, I could give you five specific amendments dealing with the summons.

The Chairman: The Committee would be very much interested in that. I think that is exactly along the lines we would like to proceed.

Mr. Aiken: Mr. Chairman, if Professor Friedland would mention briefly the sections that could effect this without going into them, I think it would be very helpful.

Professor Friedland: Well, my difficulty is whether I should deal specifically with the sections...

Mr. Aiken: No.

Professor Friedland: ...which I did not want to do, or to deal generally. I have been sort of midway between a general discussion and a strictly lawyer's discussion.

• (12.20 p.m.)

But I would mention section 435 of the Code, which I think would be a useful amendment: to amend section 435 to limit a peace officer's right to arrest without a warrant in respect of those cases where he reasonably believes that an arrest rather than a summons is necessary.

Secondly, I think section 438 should be amended in some way to provide that a policeman may release a person whom he has arrested in order to summon him.

Thirdly, I think the Criminal Code should be changed to allow a senior police officer or a police officer in charge of a station to set and accept bail prior to the first court appearance, certainly for summary conviction cases; and I can see no reason why this should not apply to all cases.

The Chairman: Would that be on his own recognizance?

Professor Friedland: In any way he wants. Presumably if the police wanted to release him it would be the type of case where they would feel that it would be proper to release him on his own recognizance.

In respect of section 438, let me give a little background on a particular problem that I have not mentioned. It is not one particular problem in this area; there are hundreds of small problems which contribute to a particular situation. Police officers throughout Canada tend to feel that the Criminal Code allows them to hold a person for up to 24 hours. The section says that you shall bring him before a Justice of the Peace within a period of 24 hours. Lawyers know that there is a House of Lords case on this, and the law appears to be reasonably clear that they should bring the person before a justice of the peace within a reasonable period of time, at the first reasonable opportunity, and that the 24-hour period is a maximum period. Yet the police tend to feel that it is a proper period for which they can hold people. Section 438 should be amended to provide that a person should be brought before a justice of the peace without unreasonable delay. I would include the words "without unreasonable delay" and in any event within 24 hours, and so on, to make it clear that this section is not intended as an authority to hold for 24 hours but is really designed as an outside limit to provide a safeguard for the accused persons.

I think it would be useful, Mr. Chairman, to provide that the Identification of Criminals Act be changed in some way to allow police officers to summon accused persons to obtain their fingerprints. At the present time the Identification of Criminals Act is limited to cases where the accused is in custody. I think it would be desirable to provide a penalty for an accused giving a false name to a police officer who summons him, and to provide a penalty for an accused who disobeys a summons.

The Chairman: Do you suggest any minimum or maximum amount?

Professor Friedland: For a summary conviction offence I believe the Code automatically provides up to six months and \$500.00, and certainly that would be adequate. But at the present time the better opinion is that there is in fact no penalty at all if an accused disobeys a summons, and so the police with a certain amount of justification say, "well, if we summon him and he does not appear, he has not committed an offence", and yet that should be an offence.

Mr. Stafford: Do you mean a mailed summons or a served summons.

Professor Friedland: A served summons.

Mr. Stafford: Of course, in respect of a served summons there is always a bench warrant issued immediately for an arrest.

Professor Friedland: That is quite right, and that is the reason—

Mr. Stafford: Really that is the penalty that most lawyers indicate to an accused when he mentions not showing up. Is that usually not enough to make sure they appear? In respect of minor offences there might not be any possibility of jail, and in some of the smaller communities where they have a court sitting only once a week and sometimes only every two weeks, it is very difficult. I personally thought that the penalty there was almost sufficient.

Professor Friedland: The Criminal Code does not provide a penalty for that very reason: the possibility of issuing a warrant of arrest.

I am leaving aside Mr. Mather's bill for a moment. It is useful to clarify the law to ensure that security in advance is not part of our system. As I said earlier, it would also be useful to attempt to set out the conditions under which bail could be denied absolutely.

Another change would be to recommend to the provinces that they take steps to ensure that the Code is properly being administered. Perhaps through the Minister of Justice an official communication could be made that the Code is not being properly administered. Recommendations could be made that steps be taken by the provinces to provide some fact-finding apparatus such as the Amicus Foundation in Toronto or the Vera Foundation in New York. I realize that is somewhat outside the Committee's jurisdiction.

The Chairman: Is that functioning now?

Professor Friedland: Yes.

The Chairman: And how satisfactory is it proving to be?

Professor Friedland: At the present time they are studying their system and we will see what the results are. I do not know whether I would wish to comment on how satisfactory it is. The difficulty is that their operation does not include as many cases as perhaps they would want. Because they have limited the type of case on which they make a recommendation they exclude a fair number of cases. Therefore they do not operate in as many cases perhaps as they should. Nevertheless I am sure that in cases in which they do operate it is being a help to the magistrates. I think that the real deterrent against absconding is not the money that you may lose but the fact that someone will come after you, bring you back, and prosecute you not just for the offence of bail jumping but also the offence with which you were originally charged. To me the important point in the bail system is that financial security in advance should be eliminated from our release practices before trial and that the real deterrent against absconding should be vigilance of search, certainty of recapture and eventual prosecution for the principal offence as well as for the accused's failure to appear for his trial. To do that it may be necessary to take a national interest in the problem of accused persons skipping bail from one province to another. Part of the reason for its not working well in the past is that there have not been a great many prosecutions for bail-jumping, and some jurisdictions have been reluctant to go after accused persons. It is quite understandable that when a person skips from one province to another there is a reluctance to spend the time and the effort and to take a man off the force to

go to that other province, to take him back and to prosecute him, because you then have him on your hands again. This works from city to city. Sudbury, or any northern city would be reluctant to send someone to Toronto to take a person back to the northern community, and *vice versa*.

• (12:30 p.m.)

Therefore, one must take a broad view of it and understand that there might be such reluctance; and it is up to the provincial governments, through their attorney general departments, to see this in the total context and realize that if forces do not go after these people to bring them back then the system will not work well, and that they must provide funds for this. I would also suggest that the federal government should provide funds if a person goes from one province to another. It then has national significance. It oversteps provincial bounds, and in much the same way that the federal government has got into the matter of, say, narcotics, which is of a national interest, the should be involved in this question of bringing back for trial people who have got away from a particular jurisdiction.

Similarly, steps might be taken by the federal government to ensure that the offence of bail-jumping in an extraditable offence may be that the principal offence with which the person is charged is not serious enough to warrant extradition, yet bail-jumping strikes at the very foundation of justice. It is really a contempt of court; it is akin to perjury. It should be considered serious enough to warrant extraditing the person from one jurisdiction to another.

Bail-jumping was not included in the Canada-United States Treaty and that may be the reason for many of our recent bail problems. Until very recently there has not been a section in the American legislation providing that bail-jumping be a criminal offence, and since, for extradition to apply, it has to be an offence in both jurisdictions, it was not included in the Treaty. I am not sure of the reason, but I think it would be a very useful recommendation for this...

The Chairman: It sounds like a very logical reason.

Professor Friedland: ... Committee to make that if an accused person shows disrespect to the judicial system by disobeying an order of the court to appear that is sufficiently serious to warrant extradition from another jurisdiction.

The Chairman: I was going to suggest, Professor Friedland, that perhaps some of the members might now like to ask you some questions. I see that Mr. Aiken would, and Mr. Silbert.

Mr. Aiken: Mine is a very simple one, Mr. Chairman. On the whole question of summonses and custody before trial and bail, is it not really the burden of your presentation that the onus should be changed; in other words, that the Criminal Code should say that a person is entitled to a summons unless it is apparent to the magistrate that it is unlikely that he will appear for his trial; and that in the matter of bail, he should be released on his own recognizance unless it is shown that he may not appear for his trial. If a direction of this kind were put in the Criminal Code relative to these three matters you have mentioned it would really largely effect the general procedure without being specific.

Professor Friedland: Yes, I think that would be very useful as a minimum; and that it would be quite desirable to give a legislative direction that the philosophy behind the bail provision is that custody pending trial should not take place unless it is absolutely necessary, because it is inconsistent with the presumption of innocence and because of its harmful effects.

I think that would be quite useful, and in many respects that is exactly what this Bill does. It is a legislative statement that if you avoid custody pending trial it should be avoided; but it goes a little further and says that if you cannot let a person out on his own recognizance, you should try something else, and if that does not work you should go to step number 2 and step number 3. I am not sure whether I would have chosen them in exactly that order.

An hon. Member: You mean the emphasis should be on release rather than...

Professor Friedland: Yes, that is right. I think that is the important point of this Bill. The reasons for its being such an important bill and the philosophy behind it seem to be obvious to this Committee, and from your questioning it appears that everyone accepts the principle of this Bill. Some say it is desirable to have it because the law is being misinterpreted and others that the solution is to make sure that those interpreting the law do so properly. But is that not obvious to many people?

The Canadian Bar Association at their annual meeting in September 1965, did not see the problem as clearly as does this Committee. To the Canadian Bar Association the solution to the bail problem was to legalize professional bondsmen. This, of course, was completely the opposite of what was wanted. This is what they have been trying to avoid in the United States over the last couple of years by getting away from custody pending trial. The advantage of this Bill is that it counteracts this other move which had the effect of saying, "Things are bad. Let us legalize the professional bondsmen and make them better." This Bill really hits at the heart of it and says that if things are bad because there is security in advance then let us eliminate security in advance.

Mr. Aiken: May I ask just one supplementary question? Probably a good many police officers and magistrates fear that they may make a mistake and let out somebody whom they should not have. If the Bill gives them direction the onus is really not on the police officer or the magistrate, but on the Crown attorney or someone else to prove that this person is not likely to appear. It might result in better administration of the law as it now exists.

Professor Friedland: That is right; I think that is a very valid comment. It tells those administering the law that the legislature feels that it is an important policy to release those awaiting trial. It may be that they will commit another offence, or that they will not show up, but the legislature says that to some extent this is inevitable and a risk that must be taken; and unless there is a clear danger that the person will abscond they should not be kept in custody. No guidance is given in the Criminal Code now on what steps should be taken, but this is true of most areas of the Criminal Code. We do not say as, for example, do the American Law Institute's Codes, the New York Penal Code or the Illinois State Code that in sentencing a person follow these principles. They have a whole section on principles of sentencing. Really all we say is: "You can do it up to life, gentlemen; do whatever you want." And that is about all we say.

• (12.40 p.m.)

But the Code should give greater guidance in all these areas. There should be a whole pre-trial section, such as in the American Law Institute, in the New York code, in the United States President's crime commission

dealing with police practices. We say nothing to the police about how they should obtain confessions, except that the courts say: "Make sure it is voluntary" and do not give very much guidance on that. It might be quite useful to set out in the Criminal Code a series of steps for the police officers to follow, such as: "You may have a short period of detention on the street for 20 minutes while you check the person's identification; in more serious cases and other cases you may take him to the police station for two hours." In other words, we give some guidance as to what may happen. It may be useful to say: "You cannot use a confession made without an independent person there." We give no guidance, for example, on the whole question of legal aid. We leave it up to the provincial governments to decide whether they have the funds to bring in a legal aid scheme and yet this is a matter which goes to the heart of the criminal trial whether a person has counsel.

It may be a very useful amendment—this is getting a little outside of bail—to say that a person cannot be tried for an offence without counsel in certain cases and therefore you set the standard just as the United States Supreme Court has done and you force the provinces to work out some scheme which ensures that a person will have a lawyer. What we are trying to do is to have, as much as possible, equal justice across Canada which no doubt the framers of the BNA Act intended because they gave the criminal law to the federal government in spite of the fact that in the United States criminal law was given to the states as well. We should attempt to ensure as much as possible that justice is even across Canada.

The Chairman: I have no argument with that principle, Mr. Gilbert.

Mr. Aiken: Thank you very much, Professor Friedland.

Mr. Gilbert: Mr. Chairman, I would like to ask Professor Friedland if what he is contemplating is but a four-tier system. First of all, the police officer that arrests would be given a certain discretion or jurisdiction over the issue of the summons. Then it gets to the police station and maybe the senior officer in the station would then exercise discretion; then there could be a justice of the peace as the third step, and the fourth step would be the magistrate. That is the four-step system that you are almost advocating there.

One of the dangers that has been impressed upon me is that—I am using figures here that the authorities tell me are correct—52 per cent of all indictable offences are committed by 25 per cent of criminal offenders, which include a group of no more than 10,000, and that group has three or more criminal convictions. Do you follow my point? In other words, more than 50 per cent of all indictable offences are committed by one-quarter of the persons who have three or more convictions.

As you pointed out in your book and you addresses, the real problem with regard to bail is assuring the attendance of the criminal in court, or the accused in court, and at the same time setting bail—an amount of bail which the accused can raise. In many cases you find men with serious criminal offences being able to raise the bail and in other cases people who have only been charged for the first time not being allowed to raise the bail. What I would like your comments on is: how do you handle these fellows with three or more convictions who are continuing to commit offences?

Professor Friedland: Your figures are interesting. I have no way of knowing to what extent they are accurate. One surprise that I got in my study was the number of people involved in the criminal process who were first offenders. I was very much surprised. It was quite a respectable portion. I cannot put my finger on the exact number but it was something like—well, I will not even estimate it—but approximately half or something like that of those involved in the criminal process did not have a previous conviction for an indictable offence which is the only thing I could find out. And it is true that there are unfortunately a great number of recidivists who keep coming through the system again and again. But there are also a great number who are not recidivists and who have never been in trouble before, and we have to gear our laws to both groups and the law must apply reasonably equally to both groups. I am not sure what comments should make on your statement, because I am not sure...

Mr. Gilbert: The point is, I think, that you pointed out, in the United States bail is mandatory. Here it is discretionary and it looks as though we would have to retain that discretionary aspect; otherwise we would run into real difficulties because the very fellow that you want kept in custody, even though

you are making the assumption, you know, of guilt, are the fellows that have had three or four previous convictions and you are not...

Professor Friedland: They may be the very ones that we should worry about because they were charged not because the evidence was strong but because they have had previous convictions and they look like likely candidates, and there would have been some other evidence. So we have to be careful not to take away rights from these people because they are the ones that may need the protection the greatest. The same argument was applied when legal aid was introduced in Ontario. Should we provide free legal aid for people with previous convictions? And someone said: "No; they forfeited their right." But these people are the ones that in fact may need it to the greatest extent.

Mr. Gilbert: I do not know if that would apply to bail or not, though.

Professor Friedland: Well, no, except if you agree that those in custody pending their trial are at a disadvantage because they cannot work, because they cannot look for witnesses and find character evidence, then to some extent it does apply. But I agree with you that we would not want to eliminate the magistrate's discretion to deny bail. I do not think there is any serious body of opinion, on the other hand, that can easily be abused and might be desirable to spell out in the legislation that if there is a serious risk of the person's absconding, then you can deny bail.

(12.50 p.m.)

On this question of previous convictions, that is very difficult. My own personal feeling there is that you cannot justifiably deprive a person of his liberty pending trial when charged with a criminal offence unless in some way it is linked with an application for preventive detention. Let me elaborate on that. It just does not make sense to me to say: "Oh, we are very worried about this person committing other offences in that two-month period pending his trial and yet we are not particularly worried about him after he is released from the penitentiary. In fact he is going to be even more likely to commit offences when he is released from the penitentiary than during that two months period pending trial. So unless you are sufficiently worried about this person because of his character, his life of crime and his past record to

justify bringing forward an application to hold him for an indeterminate period under our preventive detention legislation, then I do not think you are justified in holding him for the very crucial one or two-month period pending his trial.

Mr. Gilbert: That runs contrary to the English law which you have stated, that if the magistrate feels that the accused will commit another offence pending his trial then they have the right to refuse him bail. And as you have said, that particular principle has been unevenly applied across Canada.

Professor Friedland: That is the English law but there has recently been quite a reaction against that law on the basis that it can be very unfairly administered, even in England. So there is a reluctance to keep a person in custody, although they still do it in those circumstances, unless it is a very serious case.

Mr. Gilbert: I think I better finish off by telling Professor Friedland, Mr. Chairman, that I am in complete agreement with the principle involved and with your recommendation of the wide use of the summons, just so that you do not misinterpret what I have said.

The Chairman: Thank you, Mr. Gilbert.

Mr. MacEwan: All I want to say is that I agree with Mr. Gilbert. Professor Friedland has given us a lot of information today and I think we should now wait until we study the minutes because I am sure they will be of assistance to the Committee.

The Chairman: Gentlemen, next week we will be dealing with Bill C-96, an Act respecting observation and treatment of drug addicts. Our witness on Tuesday will be Dr. Gregory Fraser, Clinic Director, Alcohol and Drug Addiction Research Foundation in Toronto, and on Thursday Dr. J. Naiman, Psychiatrist of the Jewish General Hospital in Montreal.

If it meets with the wish of the Committee I would like to have a motion that reasonable living and travelling expenses be paid to Dr. Gregory Fraser, who has been called to appear before this Committee on November 21, 1967, and to Dr. J. Naiman, who has been called to appear before this Committee on November 23, 1967, on the matter of Bill C-96.

Mr. Stafford: I so move.

Mr. Gilbert: I second the motion.

Motion agreed to.

That, gentlemen, concludes this morning's session. Before adjourning the meeting I want to take the opportunity, Professor Friedland, on behalf of the Committee, of thanking you very sincerely for your appearance here today and for the information that

you have given to us. As Mr. MacEwan stated, when we read the minutes of evidence and have an opportunity to study your recommendations I am sure they will be very beneficial. Your recommendations will undoubtedly be reflected in the report that we in due course will be making to the House on our observations of the subject-matter of this Bill sponsored by Mr. Mather.

Thank you very much, Professor Friedland.

HOUSE OF COMMONS
Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 10

TUESDAY, NOVEMBER 21, 1967

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

WITNESS:

Dr. J. Gregory Fraser, Director, Toronto Clinical Services and Director,
Narcotic Addiction Unit, Alcoholism and Drug Addiction Research
Foundation, Toronto, Ontario.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Brown,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,

Mr. Honey,
Mr. Latulippe,
Mr. MacEwan,
Mr. Mandziuk,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,
Mr. Pugh,

Mr. Scott (*Danforth*),
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—24.

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, November 21, 1967.
(10)

The Standing Committee on Justice and Legal Affairs met at 11.20 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Choquette, Gilbert, Goyer, Guay, MacEwan, Pugh, Tolmie, Whelan and Mr. Woolliams (12).

Also present: Mr. Klein, M.P.

In attendance: Dr. J. Gregory Fraser, Director, Toronto Clinical Services and Director, Narcotic Addiction Unit, Alcoholism and Drug Addiction Research Foundation, Toronto, Ontario.

The Committee resumed its consideration of the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*).

The Chairman announced that a meeting of the Subcommittee on Agenda and Procedure will be held soon, to consider what additional witnesses should be invited in connection with the subject-matter of Bill C-96.

The Chairman introduced the witness, Dr. J. Gregory Fraser, of the Alcoholism and Drug Addiction Research Foundation in Toronto.

Mr. Klein was invited to read a letter dated November 15, 1967, which he had received from Dr. Vincent P. Dole of The Rockefeller University. The letter contains Dr. Dole's views on the subject-matter of Bill C-96. Attached to the letter was a copy of an article by Dr. Dole and Dr. Marie Nyswander, entitled *Heroin Addiction—A Metabolic Disease*, which appeared in the Archives of Internal Medicine, July 1967, Volume 120. The Committee agreed that the letter and attachment should be filed as an Exhibit (*Exhibit C-96-3*).

Dr. Fraser made a few introductory comments on the subject-matter of Bill C-96 and read a prepared statement, entitled *Comments On Narcotic Addiction*. He also commented on the subject of methadone therapy, as requested by the Committee.

The Members questioned Dr. Fraser for the balance of the meeting. The Chairman then thanked the witness for the expert information which he had provided to the Committee.

At 1.05 p.m., the Committee adjourned until Thursday, November 23, 1967 at 11.00 a.m., when the witness will be Dr. James Naiman, Assistant Professor of Psychiatry at McGill University.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, November 21, 1967.

(11:20 a.m.)

The Chairman: The meeting will come to order. We are resuming Committee consideration of the subject matter of Bill C-96, an Act respecting observation and treatment of drug addicts.

It is my pleasure and honour to introduce as witness of today, Dr. Gregory Fraser, Director of the Toronto Clinical Services of the Alcohol and Drug Addiction Research Foundation. He is also Director of the Narcotic Addiction Unit.

Dr. Fraser graduated in Medicine from the University of Manitoba in 1957. He did post-graduate work for five years in psychiatry and internal medicine at Vancouver, Montreal and Saskatoon. He is a specialist in internal medicine and a Fellow of the Royal College of Physicians.

Dr. Fraser has been with the Alcohol and Drug Addiction Research Foundation since 1962. I think you all have—if you have not, we have copies here—a memorandum that Dr. Fraser has prepared. Before calling on Dr. Fraser, Mr. Klein, the sponsor of the Bill, is here and he has a letter from Vincent P. Dole, M.D., of the Rockefeller University and I believe he would like the permission of the Committee to read it.

Is that agreed?

Some hon. Members: Agreed.

Mr. Milton Klein (Sponsor of the Bill): Thank you, Mr. Chairman. Dr. Vincent Dole, if you recall, is the doctor affiliated with the Rockefeller Institute who is referred to in the evidence given last time as experimenting with methadone the substitute drug for heroin and so forth. He says this in his letter of November 15, 1967:

Thank you for letting me see the bill concerned with drug addiction. I am very pleased to support your position that drug addiction is a form of medical

illness, and that the objective of society should be to provide treatment rather than punishment.

The difficult problem in any such legislation is to define the rights of the addict to choose treatment or even to reject it. In practice the laws that have made treatment compulsory have become simply the instruments of putting addicts in jail without having committed a crime. I would urge, therefore, to recognize that the so-called treatment programs in which jails are called hospitals is not a bonafide treatment from a medical point of view.

I believe that you might do well to describe drug addiction as a medical disease rather than identifying the bill with some particular theory of the condition, as you do in stating that it results from some type of mental illness. The enclosed reprint may help clarify the distinction between different theories of this condition.

Let me emphasize that I support the intent of your bill and hope that you can formulate a process that will bring addicts to doctors rather than to jails.

Sincerely yours,
(sgd.)

Vincent P. Dole, M.D.

With the permission of the Committee, I would ask that this letter be placed on the record.

The Chairman: The letter is on the record.

Mr. Klein: As an addendum?

The Chairman: As an exhibit. It is agreed?

Some hon. Members: Agreed.

The Chairman: Dr. Fraser, you may proceed. You know that after you have completed your statement the meeting is thrown open for questioning.

Dr. Gregory Fraser (Clinic Director, Alcohol and Drug Addiction Research Foundation, Toronto, Ontario): Certainly. Mr. Chair-

man and members of the Committee, I should like you to know that I consider it a privilege to appear before you in order to make a brief statement on Bill C-292 which was read in the House of Commons on April 21, 1967. Following this presentation, I shall be pleased to answer, if possible, any questions which you might have and to share with you my views on a public health problem which has been a very important part of my endeavours during the past three years.

My concern has not been exclusively related to narcotics; rather it has included primarily alcohol and other addicting or habituating drugs such as barbiturates, non-barbiturate sedatives and hypnotics, amphetamines and, more recently, the hallucinogens such as marijuana and LSD.

I should like to emphasize that I am appearing before you today as a senior member of the Toronto Clinical Services and that my views are based on my clinical experience in this field. My views must not be considered as the official views of the Addiction Research Foundation. Official views of the Foundation are formulated following deliberation, discussion and consultation with many persons both within and without the Foundation.

I think that you will be pleased to know that the Foundation is presently considering presenting a brief to this Committee. If this is done, such a brief will represent the views and thinking of a large variety of professionals who may view the problem with a very different emphasis. If you are interested in the official views of the Foundation, then I would urge you to approach the Executive Director for the submission of such a brief.

Mr. Chairman, before I read my comments on Bill C-96 or C-292, I note that this Bill states:

This Act may be cited as the Drug Addicts Protection Act.

A problem immediately arises as to what we mean when we say "addict." For example, the most common addicting drug used in our society today is alcohol, and I think anyone who is addicted to alcohol is an addict and can be called an alcoholic. On the other hand, many people can be alcoholic without necessarily being addicted to the drug.

For example, some people with certain underlying personality disorders may, when drinking a certain amount of alcohol, become

involved in behaviour where they suffer considerable economic loss and damage and insult to their families and friends. Certainly such a person, by many definitions, would be considered an alcoholic although he need not necessarily be addicted to the drug.

In 1957 the World Health Organization defined drug addiction by naming four characteristics: the first is the desire to continue taking the drug; the second, a tendency to increase the dose; the third, a psychic and generally a physical dependence on the drug and the fourth, an effect detrimental to the individual and society.

Because of the difficulties attending the definition of the word "addiction", in 1961 this Committee of the World Health Organization discarded the term "addiction" and substituted for it the term "dependence" specifying in each case the drug dependence of a certain type. And if I understand the intent of this Bill correctly, I think that what would be concerned this morning with drug addiction, or drug dependence of the morphine type, which has the four characteristics of addiction which I outlined to you.

The public health services hospitals in the United States at Lexington and Fort Worth maintain that evidence of physical dependence is necessary in order to define the pathognomonic feature for the diagnosis of addiction.

And now, turning to the comments which I have prepared, this is not as comprehensive a statement as I should like to have prepared for you at this time; however, with the limit of time at my disposal, it is the best that I could do.

Narcotic addiction is a public health problem. Classification of narcotic addicts is lacking in sophistication and includes professional addicts, medical addicts, and street and criminal addicts.

Professional addicts include doctors, dentists, nurses and pharmacists, and other professionals who have a certain accessibility to narcotic drugs. There are many different things which distinguish them from the other groups and it is generally recognized that the treatment of their addiction is more successful in terms of abstinence from drugs, and rehabilitation.

• (11:30 a.m.)

Medical addicts are persons who become addicted during the treatment of a disease, most often a chronic, painful, and incurable

isease where narcotic substances are administered to control pain. There is much agreement in the medical literature as to how these patients should be treated, although even here one is cautioned to use the smallest amount of the drug to afford sufficient relief of pain. Occasionally, however, a medical addict can pose a very different problem in therapy, especially when the disease for which the narcotic was originally prescribed is arrested or cured and yet the medical addict has an intense craving to continue taking the drug. Under these circumstances medical addicts may come into conflict with the law. For example, they may forge physicians' prescriptions and in this way be harged in court.

The vast majority of narcotic addicts are criminal or street addicts and it is probable that it is concern for this group which resulted in the formulation of the Bill C-292. One of the fallacies which has given rise to much misunderstanding is the belief that narcotic addicts are comprised of a homogeneous group of persons who can be rehabilitated if they are afforded a particular type of treatment. This, however, is not true. Rather, narcotic addicts are comprised of a heterogeneous group of persons with different personalities and problems, social, psychological, and economic. It has become clear that a wide variety of different approaches in treatment are required if a significant percentage of patients are to be rehabilitated. Narcotic addicts have done a good job in certain areas of creating the belief that all of their problems would be solved if they had their drug of choice made legally available to them. Again, this is not true. The problem is much more complex and the patient presents many problems in therapy.

Perhaps you will be interested in listening to some of the experience of the Narcotic Addiction Unit since its beginning several years ago. The basic principles by which the clinic works with narcotic addicts include the following:

Narcotic addiction is a public health problem.

It involves the patient's total person, including his physical, psychological, social and economic well-being.

Involvement with drugs is symptomatic.

A voluntary accepting approach with a graded program of expectations has the best chance of success—for some addicts.

From February 1, 1964, to June 30, 1967, 321 addicts were admitted to the program. On June 30, 57 of these were actively involved in the treatment program and the other 264 were not actively involved in the treatment program and they are referred to as inactive. During the past two years the number of active patients has remained relatively constant.

Of the active group of patients 39 were male and 18 were female; the mean ages of the male was 35 years and of the female 29 years. Both males and females had an average of 10 years of education. There were no significant differences in the ages and education of the active and inactive groups. Of the active patients 50 per cent were married and of the inactive patients 33 per cent were married.

There is a significant difference between the duration of treatment for the two groups. The mean duration of treatment for the active group is 8½ months and for the inactive group 2½ months. Many of the inactive group of patients visited the clinic on only a few occasions. They could not, in fact, be considered to have entered a therapeutic process. At the same time it must be concluded that the treatment program which we have offered over the past few years has not been accepted by the majority of addicts who apply for treatment. The drop-out rate for the total period of time is 85 per cent.

Patients are most commonly self-referred to the clinic although some patients are referred to us by social agencies, private physicians and penal or reform institutions. Most often the patient is admitted to the clinic within one to two weeks of his initial contact. The admission procedure involves an assessment of the addict's drug usage, his social and economic performance, his physical and emotional state and his motivation for treatment. This assessment involves the total staff; intake interview by the social workers, physical examination and history by the physician and nurse, personality assessment by the psychiatrist and social and economic performance by the social worker. Applicants are then conferenced by the total staff team including other program staff such as an occupational therapist. Program content includes chemotherapy, psychotherapy, occupational therapy, social, vocational, and personality counselling and social recreation.

The experience of the voluntary outpatient clinic of the Addiction Research Foundation

has been very similar to other voluntary out-patient programs which employ similar techniques to our own. Recently the Addiction Research Foundation established a Narcotic Review Committee to evaluate the existing program, to survey the literature in regard to narcotic addiction treatment programs, elsewhere and to make recommendations to the Foundation as to what changes should be instituted so that we may more effectively serve this group of people who come to us. Although this report is not yet completed, it is already clear that a wide variety of approaches in treatment of narcotic addiction are necessary if more than a small percentage of patients are to be effectively rehabilitated.

There is a need for both voluntary and involuntary programs.

Mr. Chairman, you asked me if I would make a few comments on methadone. Maintenance methadone or methadone therapy is a most important component of chemotherapy and it is used for two purposes in the treatment of a narcotic addict. In one instance it may be used for withdrawal treatment and it is well recognized and agreed in the medical literature that this is the best treatment to afford a person who is addicted to heroin or morphine or other synthetic narcotic substances. It is long-acting in the body and it can be administered once daily, although characteristically, because of the patient's needs the medication is divided for withdrawal treatment into several doses a day. I do not think there is any disagreement about the place of withdrawal treatment, although there are those who would argue that withdrawal treatment should not be administered to patients who are voluntary out-patients. Some authorities advocate that persons undergoing withdrawal treatment for methadone should be in a closed hospital where the likelihood of obtaining illicit drugs is very much lessened and where there is perhaps some measure of involuntary control over the patient so that indeed you may be sure that you effect withdrawal.

• (11:40 a.m.)

I think that the views of these authorities may change as further experience in the treatment of the narcotic addict with withdrawal changes. In recent years laboratory techniques have emerged in particular thin layer chromatographic examination of the urine for not only narcotic substances but barbiturates and amphetamines. So that if a

person were to come to the clinic for withdrawal treatment one might administer the drug to him on a daily basis, collect a sample of urine and examine it for the presence of other substances. If these substances are found with a certain frequency, which I will not attempt to define, in the urine of a patient undergoing withdrawal, one would possibly discontinue the withdrawal treatment.

Of much greater controversy within the medical literature and among the medical authorities is the place of maintenance methadone therapy. We have employed this particular treatment in our clinic on the following basis. It was instituted on the hypotheses that it lessens the craving for the illicit use of drugs; that it decreases preoccupation with drugs and related activities and that it increases emotional stability as reflected, for example, in employment status, family relationships and the addicts' subculture. Patients are selected for this treatment on the basis on the following expectations: the clinic would be the only source of narcotic drugs; the patient would avoid the addict subculture area; the patient was employed seeking employment or engaged in a retraining program; the patient's residence was relatively stable and that the patient seemed to be positively motivated toward the goal of our treatment program.

Methadone is presently administered on in liquid form. Initially it is dispensed on a daily basis but as the patient demonstrates his reliability, it may be dispensed twice weekly or even once a week. Patients do not—

Mr. Klein: May I ask you one question, doctor, on that point. What is the cost of a dose of methadone?

Dr. Fraser: Oh, it is very small; I do not know.

Mr. Klein: I am told it is less than cents.

Dr. Fraser: It is very small; I know that, sir. Patients do not know the dose of methadone which they receive. The maximum daily dose of methadone administered is 40 mgs. with a mean of less than 30 mgs. Of the active group of patients, 42 were on maintenance methadone therapy for a mean duration of 8½ months. Of the inactive group 39 patients had been on methadone for a mean duration of less than four months.

During the summer of 1966 an independent research study was carried out on the active patient population by a sociologist who is the senior member of the research division. Of the 57 patients who were active in treatment at that time, 63 per cent had more or much more contact with square friends; 88 per cent had less or much less involvement with the addicts of culture; 33 per cent had more or much more contact with family members; 88 per cent reported a marked improvement regarding illicit use of drugs and 73 per cent had less or much less preoccupation with drugs.

Now Dole and Nyswander in New York City have more experience with the use of methadone for maintenance treatment in the treatment of narcotic addiction than any other authorities in America and I think at the present time they have close to 600 narcotic addicts who are on this particular therapy. They use a much higher dose of methadone than we employ in the clinic. They go as high as 180 mgs. with a mean of 100 mgs.

The patient is admitted to hospital for up to six weeks while he is stabilized on this particular medication and it is my understanding that controlled studies have been carried out on patients in hospital so that if they are administered narcotic substances they do not get the euphoriant effect. Dole and Nyswander also claim that doses of methadone at this level completely relieve the craving for narcotic drugs and within their program their drop-out rate is very small.

I do not know the criteria of accepting patients into their program. It is quite clear that not all narcotic addicts are going to apply for treatment in a voluntary kind of program. It seems that many of them have to be compelled to take treatment, but I think that all medical authorities feel that most studies in the treatment of narcotic addiction lack controls and careful evaluation. The emphasis which is being placed by medical authorities at the present time is on the need to more carefully evaluate the treatment programs which are presently employed in various parts of the world.

I would like to comment for just a moment on Synanon and Daytop Lodge. As you know, ex-addicts are very important in these institutions and there is a complete authoritarian structure throughout them. I had the opportunity of visiting Daytop Vil-

lage on Staten Island in New York about a year and a half ago and one could not help but be very impressed by seeing several hundred narcotic addicts who were obviously living in a drug-free environment and obviously were much more content with their lives. Certainly they may have developed a dependency on the institution and there are many who criticize these organizations, stating that the narcotic addict becomes dependent on this particular sub-culture and that his eventual rehabilitation into the community will not be achieved. I do not share this criticism; I think it is much more constructive to have a narcotic addict dependent on a sub-culture which is drug free, who is not engaged in illicit or criminal activities such as most street addicts are, and who is self-supporting and may be making a worthy contribution, for example, even to knowledge about narcotic drugs and the dangers which they hold for the user.

I think there is a need to explore a wide variety of approaches. In New York City, if patients who may have a term of imprisonment but then are released on parole are carefully followed on parole by their probation officer the chances of remaining abstinent for a relatively long period of time are much greater than if the person is released under no supervision whatsoever.

In concluding my formal remarks, Mr. Chairman, I must say that we have to note and take cognizance of the fact that in our experience there has been a drop-out rate of 85 per cent. We do know that a small number of those who have dropped out are now drug-free and are working and contributing as members of the society in which they live. However this number is very small and despite the fact that there is this high drop-out rate I think it is important to recognize that at least a percentage of narcotic addicts have responded to the type of treatment program we have offered. Our experience is somewhat better than with the public health hospitals in the United States that I mentioned, and we look now to the future to developing a much greater diversification in the approaches of treatment which we use and thereby think that we will be able to help a larger number of patients who come to us for treatment. Thank you.

• (11:50 a.m.)

The Chairman: Thank you very much, Dr. Fraser.

Are there any questions?

Mr. Tolmie: Mr. Chairman, I think all of us realize that a great deal of crime and violence results from the efforts of addicts to obtain their drugs, as they do of course, illegally. Also, these cravings make it possible for the creation of syndicated crime rings to provide the drugs necessary. In effect, you stated in your presentation that the results, as far as cures are concerned, are very dismal indeed, as 85 per cent drop out. My question is this: It has been suggested that a program could be developed whereby drugs would legally be supplied free or at a nominal cost to drug addicts. Now if 85 per cent of drug addicts drop out of these voluntary clinics it means they go back to the streets. Would it be possible to initiate a type of facility where drugs could be supplied legally and free and at the same time continue with your type of narcotic addiction unit, the purpose being to make certain that these so-called hopeless cases at least would not have to resort to crime or violence to obtain what they need? This may be a feeling of desperation but it appears to me from what you have said here that you are making very desperate efforts to no avail and that the real problem is the crime induced by people who have no control over their desires. I would like your comments on that.

Dr. Fraser: First, in regard to crimes of violence, Mr. Chairman, I think surveys and studies have quite clearly indicated that narcotic addicts very uncommonly become involved in crimes of violence. They become involved more in crimes against property because they support their habit mainly by theft, at a considerable cost to the community, and there is no doubt about that. Female addicts resort quite often to theft or prostitution in order to gain sufficient money to support their habit.

I should emphasize that we have not offered maintenance methadone therapy to all narcotic addicts who have come to us for treatment. I outlined the expectations that were placed on the narcotic addict if we were going to supply him with drugs, perhaps the most important one being that he was employed, seeking employment or engaged in a retraining program.

Mr. Tolmie: You do supply certain people with drugs though?

Dr. Fraser: Yes.

Mr. Klein: Not methadone though?

Dr. Fraser: Yes.

Mr. Klein: Are you speaking of methadone or are you speaking of opium?

Mr. Tolmie: I am talking about the drug they crave and have to resort to violence to obtain.

Dr. Fraser: They do not resort to violence.

Mr. Tolmie: Or resort to theft or whatever it might be. Does your particular unit provide these drugs that they find so necessary?

Dr. Fraser: We provide drugs in the cases to a patient whom we feel is somewhat motivated for treatment, is involved productively as I mentioned, is seeking employment or engaged in a retraining program, or employed.

Mr. Klein: What kind of drug do you supply?

Dr. Fraser: These were the expectations outlined for placing a person on methadone.

Mr. Tolmie: Do you supply heroin?

Mr. Klein: Do you supply heroin and opium?

Dr. Fraser: Oh, no.

Mr. Tolmie: Will you continue please.

Dr. Fraser: What was the other part of your question?

Mr. Tolmie: Although you have made valiant efforts, according to your presentation, is it correct that the results are negligible?

Dr. Fraser: No, I do not say that. I say that we have demonstrated that a voluntary outpatient approach that uses all the types of treatment I have indicated will help about to 15 per cent of narcotic addicts who come to us on an out-patient basis. Now this certainly is better than the follow-up studies which have been done for example in the public health hospitals which I referred to in the United States. This is somewhat of an improvement. Although this approach offers some benefit to a small percentage of patients, most of the patients come and need treatment almost immediately; they may come two or three times to the clinic and that is all.

Mr. Tolmie: I will try to put my question very succinctly. Regardless of your efforts and I certainly appreciate what you are trying to do; in many cases it is hopeless—that

drug addict goes back to the streets and as you say, resorts to theft to obtain what he has to obtain. Do you feel a social service for the protection of society would be rendered if centres were developed whereby drugs which they crave could be supplied legally to them and at a nominal cost?

Dr. Fraser: Not without all of the other services which I have outlined to you. Although the people in the narcotic control division say that the statistics of the clinics that were established in the 1920's in the United States for this purpose were incomplete for careful evaluation they felt that this greatly increased the incidence of narcotic addiction at that particular time, and this is why these particular authorities oppose so greatly and are so fearful of what are very important experimental studies and new studies in the treatment of narcotic addiction. But supplying the drug alone to the person will not solve all of the problems. He has become habituated to a certain way of life over a long period of time and just giving him the drug will not solve all these problems.

I mentioned that the average education of the patients coming to us was 10 years. Although I have not the details of their occupational histories with me some of them had never worked for more than a few weeks to a few months at a particular time. So a person needs much encouragement in getting ready for employment and he needs much encouragement and support to seek and obtain employment. Then, how many people are willing to employ narcotic addicts if they know that they are narcotic addicts and have been involved in criminal activities?

Supplying the drug alone free will not solve the problem; it is much more complex.

Mr. Tolmie: Yes, I quite realize that. I do not want to pursue my line of questioning too long. I am not thinking so much in this particular case of the drug addict himself; I am thinking of society. If, as I say, these drugs were made available in this manner would it not have a beneficial effect in view of the fact that the rate of theft, crime and prostitution would be decreased?

Dr. Fraser: This has been argued and postulated. There are no studies which are going to indicate that this is so. One can develop a hypothesis to this extent but whether or not this would actually occur I cannot tell you. I can tell you that on the doses of methadone

which we have employed in our clinic, and we wonder whether we should not have employed higher doses of methadone in our clinic, we know that even though they do get this drug at the level, many of the narcotic addicts who have been placed on maintenance methadone continue to use other illicit drugs, as determined by our thin layer chromatographic analysis of the urine and by physical examination. So we may have been merely adding a drug or decreasing their habit on the streets, but not necessarily ending it. I think that we need more time and further study to see if by increasing the dose we could completely remove their craving for illicit drugs. As I mentioned in my statement to you earlier, the most promising work in this regard is the work of Dole and Nyswander in New York City, where their drop-out rate is very small. However, they do deal, according to people to whom I have talked, with a selected group of addicts, and not all addicts are going to come to them for treatment.

• (12 noon)

Mr. Tolmie: Do you know of any other countries that have tried this system of legal drug dispersal?

Dr. Fraser: Other than the United States?

Mr. Tolmie: Or Canada. Has it ever been tried or practised in any other country?

Dr. Fraser: In Britain, certainly, where they administered both heroin and cocaine to patients.

Mr. Tolmie: How did it work?

Dr. Fraser: During the initial follow-ups which were reported in the literature there were very promising results, but as one went farther on in the studies, they seemed less promising in their approach. I have never had the opportunity personally to look at these programs, but I have heard a wide variety of different reports about exactly what was being accomplished. Some claim that absolutely nothing is being accomplished, except having drug addicts who were high on heroin and cocaine, to others who claim that many of the addicts were rehabilitated, working, and supporting their families.

Mr. Woolliams: I have a related question. I have never felt that one can ever legislate morality. I suppose the most important thing to do is to try to enact laws which help the

addicted individual and thereby help society. My first question which is leading up to something, is this: Do you agree that the law as it is now, the Narcotics Act, has pretty well demonstrated that it has failed?

Dr. Fraser: Yes.

Mr. Woolliams: Our Canadian Act was based on the one in the United States, just as we followed prohibition. When the United States had prohibition we tried to legislate morality. You agree that the law as it is today has failed. In what way do you say it has failed?

Dr. Fraser: I think it has certainly been well demonstrated that if you incarcerate an addict for a number of years, almost before he is out of jail he is back on drugs again and once more involved in the criminal activities with which he had been associated in obtaining these drugs. Many patients—or, in this case, many prisoners released from jail, are re-arrested within a day or two of their release from prison. Therefore, incarceration alone certainly has done nothing to solve the drug-addiction problem.

Mr. Woolliams: That brings me to my second point. It is not the drug itself; it is the desire and craving that have created these people who follow a criminal course. You have already said that.

Dr. Fraser: Yes; to support their habit.

Mr. Woolliams: That is right. Is that not what the British have tried to cure? Is not the problem that these people go out, and, having become addicts of a certain drug such as heroin, may have to pay such large sums of money for it that the consequence is that they commit theft, burglary, prostitution and all those kinds of crimes in order to get the drug? That is the whole problem, is it not?

Dr. Fraser: No, not the whole problem.

Mr. Woolliams: It is very largely the main problem.

Dr. Fraser: It is certainly one of the problems.

Mr. Woolliams: Yes. Now, I would just like to point out something to you. From some of the material that I have read I gather that in England they have increased the dosages and that where it has been free, or comparatively free—the addict has become even more immersed in his addiction because he can

readily get it. He takes bigger dosages as time goes on. Therefore, what is happening is that he becomes a greater addict. This has been one of the arguments.

To your knowledge, what is the percentage in Canada, under the present law and present circumstances, who have been cured after having become addicted to heroin or any other such drug?

Dr. Fraser: Very small. I could not give you a percentage, because when you say "cure", what do you mean by "cure".

Mr. Woolliams: So that they do not get the habit again—are completely cured of the habit?

Dr. Fraser: Very small.

Mr. Woolliams: Very small. Then that is somewhat of an answer to my good friend. Once the particular individual is addicted, he will probably commit all these crimes under the Code and that is why he gets into jail. Is because he must get the drug. Would it not be better if he went to a health centre? You cannot cure him. You have already admitted that the percentage of cures is small. Even if he took more of the drug he would not be committing these crimes on society and demoralizing those with whom he came in contact. He could go to one of these centres and be able to get the drug. That individual may be somewhat isolated from society, but at least he or she is out of the way and not demoralizing the rest of society.

Dr. Fraser: Let me say that I would not be involved in the work that I am doing if I did not believe that methadone, or perhaps other narcotic substitutes, might not aid in the rehabilitation or improvement in well-being of these particular people.

People like to believe though, that all problems related to narcotics, and the narcotic addict will immediately be solved once you give the person a sufficient amount of drug. This has not yet been proven. It would be dangerous and wrong to say that you are going to remove all the problems associated with narcotic-addiction just by supplying the drug. It has been demonstrated that some narcotic addicts merely take the drug which they are getting and also take other illicit drugs which they continue to obtain on the street, and continue to engage in the activities in which they have been involved all along.

Mr. Woolliams: There is some suggestion that when methadone is used as a cure the patient becomes really "hooked" on methadone for life in order to stave off the addiction to the other drug. Is that correct?

Dr. Fraser: Yes; the patient becomes addicted to methadone.

Mr. Pugh: Would this be a parallel to a diabetes cure?

Dr. Fraser: I could not really equate it with diabetes, which we know is perhaps a variety of different disorders and where there is a relative or absolute deficiency of insulin in the body. Metabolic changes occur, of course, in the addict who has been on heroin for a long period of time, but whether or not that creates irreversible changes which necessitate his having the drug from that time forward, cannot really be stated with certainty. Certainly patients who have been incarcerated, or involuntarily or voluntarily committed to a hospital such as the one at Lexington, who have been off these drugs for a long period of time, when released become involved in the society from which they came. They certainly do not at this time have a physical dependence on the drug, although they may have a psychological dependence.

There are also authorities who claim that it is necessary to keep a person in such a hospital for as long as six months if one hopes to remove the physical and psychological dependence entirely.

Mr. Woolliams: I have just a few more questions. Under the British system the addict can get a certain quantity of the drug. You have said in your own brief that there are professional addicts now who will probably take drugs all their lives and who, because they are in the professional class, may never find themselves in the position where they have to commit any crime. From your experience, does heroin really impair health? Is there any evidence of that? Are there any statistics indicating that it has an effect on the longevity of the individual?

(12:10 p.m.)

Dr. Fraser: Certainly heroin impairs people. For example, it markedly decreases appetite. People on heroin often eat very little and lose weight; they become malnourished. Its most common side-effect is that it gives rise to constipation. The great danger in the use of heroin, as it is obtained on the street anyway, is that a person who has had

a high addiction to heroin and then has had it withdrawn, either in jail, or in hospital, or elsewhere, may take some heroin and kill himself in the process. That is probably the most common way of meeting death from heroin.

I do not believe, however, that it has been demonstrated that there are long-term, organic disorders arising from heroin.

Mr. Woolliams: It may be also that the malnutrition, outside of the effect of the drug itself, may be due to the fact that a person who has to choose between getting the drug or getting a room and meal, will choose the drug. I think we now come to the thing that we are all concerned about at the present time, the use of marijuana by university and college students in Canada and the United States. The suggestion has also been made by medical people and experts like yourself that this is merely the beginning and then they go on to other drugs. Because of the extensive use of drugs by certain college students in the United States and Canada, what would you suggest as the solution to this problem at the present moment?

Dr. Fraser: The longer I am here the less I feel like an expert. I certainly do not know what the problem is. I do not think this is really a question for a medical authority. I think it is a question for the community and society at large to decide what to do about the problem of marijuana. As you know, there are committees that now want to legalize marijuana and I suppose the position that a medical person should take is that if such a substance does no harm then one should support such legalization.

Mr. Woolliams: On that point, if I may interrupt you, I was talking to one of the top medical men from Toronto recently—I do not want to use his name—and I would like to get your idea on this because other medical people and experts in the field have made other statements on the effect of marijuana, but he voiced the strong opinion that marijuana is the type of thing that has serious and permanent effect on the cells of the brain. In other words, if an intelligent person with an I.Q. of 130 or 135 continues to use marijuana it will have the harmful effect of reducing that person's I.Q. It destroys certain cells of the brain. It is not like being an alcoholic. You may be an alcoholic but if you get away from the alcohol habit you can return to being a normal individual with all

the physical and mental capacities you had before you become an ordinary alcoholic. What is your opinion in this regard? There are a lot of professors in universities and medical people who keep coming out with the statement that there are no harmful effects from the use of marijuana. University and college students have said to me, "There is no harm in it. It is no worse than alcohol or tobacco. I am going to use it." Can you give us an unequivocal answer with reference to whether, in your opinion and from your experience, marijuana is harmful and has permanent effects, or are some of these other experts trying to leave the impression that there are no harmful effects?

Dr. Fraser: As you know, there are many types of marijuana and they go under a great variety of names. Marijuana obtained from the eastern countries might contain more or even different active ingredients of marijuana. It is claimed from studies which have been done that in some of these countries it does give rise to permanent organic deterioration of the central nervous system. However, whether the marijuana they are using is the same as the marijuana we are using in this country, which I think is mainly imported from Mexico, I do not know. I certainly do not think there is any conclusive evidence today on which I can state that marijuana gives rise to organic brain damage.

Mr. Woolliams: Is there any conclusive evidence that it does not?

Dr. Fraser: No, because the studies which have been done in countries where marijuana is used to a large extent have not been controlled studies. The greatest criticism of these clinical studies in regard to the addiction field is that so many of them have not been controlled.

Mr. Woolliams: Is it not a fact that when these medical people and professors, who have some knowledge of the subject of drugs, make these statements they do irreparable social damage because they leave the impression with the youth that irrespective of the type of marijuana it is, whether it is grown in China or in any part of Asia, Europe, Canada or the United States, that it is all the same package. They really believe there is no harmful effect from it and as a result they use it and say, "Look, I am going to get a kick out of marijuana instead of going out on my weekend drunk". Is that not right?

Dr. Fraser: Are you asking me if marijuana and alcohol are similar?

Mr. Woolliams: No, I am not asking that. Does it not have a psychological effect on a student if he believes it when he hears people that hold certain positions in the scientific and medical field say that it has no harmful effects and that he may continue to use it?

Dr. Fraser: As I say, we just do not have the necessary information to make unequivocal statements as to the long-term effects of the marijuana that we use in this country.

Mr. Woolliams: Perhaps I will put it a little more mildly. Would you agree, then, that it would be better, until we have that kind of evidence, if those people did not make any... evidence make any...

Dr. Fraser: I think many people make irresponsible statements about drugs, not just professors.

Mr. Pugh: May I ask a supplementary or that one matter. These irresponsible statements—or responsible, whichever way you want to put it—to your knowledge are definitely not based on actual research?

Dr. Fraser: No.

Mr. Pugh: There is no research going on that has reached the stage where they can say whether it is harmful or non-harmful?

Dr. Fraser: No. It is illegal to use marijuana, therefore one does not administer marijuana to people to find out what effect it has. As I said, the only studies that are available concerning the long-term damaging effects of marijuana are from countries where marijuana is extensively used and that may not be the same kind of marijuana that we use in this country.

Mr. Pugh: Is there any research being done there which would give an indication on way or the other?

Dr. Fraser: Alcohol...

Mr. Pugh: No, I am talking about marijuana.

Dr. Fraser: But we want to know how such marijuana is used, over what period of time it is used and how habit-forming—and mean psychologically habit-forming—it is. Does a person develop an habituation to marijuana to the extent that they become

interested in marijuana smoking and nothing else and what are the contents of the active ingredients of marijuana. Although it is shown that there are hospitals which contain many organically deteriorated patients who have been using some kind of marijuana, these studies have been uncontrolled.

Mr. Pugh: But in the countries you mentioned where the use of marijuana is legal, there is as yet no known research on the subject?

Dr. Fraser: That question cannot be answered unequivocally.

Mr. Woolliams: May I just ask a supplementary on that line of questioning. You mentioned there was evidence of organic deterioration in certain cases where people had been using some kind of marijuana. Is that in itself not sufficient evidence to condemn the use of marijuana as a drug by individuals? No one has done any research on whether it is harmful or not and yet it is shown to have harmful effects organically so far as individuals are concerned. Is that not sufficient evidence to condemn it and place it in the category of a dangerous drug?

(12:20 p.m.)

Dr. Fraser: I said we did not know how dangerous is the long-term use of marijuana.

Mr. Klein: In other words, a filtered marijuana. It is silly, is it not?

If I may ask a supplementary, in speaking of addiction you used a word which I think is very pertinent to this particular discussion, that is, "dependency" on marijuana. If there were a debate on whether marijuana is addictive or not, would you say that with the person that smokes marijuana it could become a matter of dependency?

Dr. Fraser: Yes, it certainly could.

Mr. Klein: Although he might not be addicted in the narcotic sense, he becomes so dependent upon it that it almost becomes an addiction. Is that not correct? A person can become very dependent upon cigarettes and I would say that a person who cannot give up cigarettes—and I am not making any reference to our friend over here—becomes very dependent on them.

Dr. Fraser: Yes.

Mr. Klein: Where does dependency stop and addiction begin?

Dr. Fraser: As I say, the World Health Organization, because of all the difficulties in arriving at what constitutes "addiction", have now dropped the term and use the word "dependency".

Mr. Klein: Exactly. Therefore if we use the term that persons can become "dependent" upon marijuana, then would you not say it becomes a danger?

Dr. Fraser: Dependency is not, of itself, necessarily harmful. All of us, or many of us, are dependent on our morning coffee containing caffeine which is a stimulant, and we become, through habitual use of this, dependent on it. But I do not think anyone is advocating that we outlaw the use of coffee just because we happen to be dependent on it in our everyday lives. We know far more about the very damaging effects of cigarette smoking, but I do not see anyone advocating that we outlaw cigarettes.

Mr. Klein: We may get to that.

Dr. Fraser: Why, I certainly hope that they do not advocate that we lock everyone up for...

Mr. Klein: No, no, I am not thinking about locking them up; we are very much opposed to that. But would you say, if I may continue on that subject, that marijuana, glue sniffing, and all these other innovations could contribute to the decadence of our society?

Dr. Fraser: Well, let me answer about glue sniffing. It is known that there is a very damaging substance in glue sniffing. I think we have had damage reported in Toronto from glue sniffing. We have witnessed disordered behaviour as the consequence of glue sniffing, and perhaps more important is the brain damage, the kidney damage, the damage to the blood-forming tissues of the body which we know arise as the result of glue sniffing. So certainly if everyone adopted glue sniffing as a habit, this certainly would result in considerable deterioration of the people using it, and therefore, I guess, to the decadence of society.

The Chairman: Mr. Pugh?

Mr. Pugh: Before I start asking my questions, and there are not very many, I would like to go on on one thing. We have established that there is no known research—certainly not in Canada and probably not in the United States and elsewhere where marijuana is illegal—into either the harmful effects or the

non-harmful effects. Would you say offhand then that any statement by a medical man on the subject of whether it is harmful or non-harmful is an irresponsible statement? There is no known research...

Dr. Fraser: I think there are statements which do not present the facts as we know them that tend to be irresponsible.

Mr. Pugh: You made the statement that you have men in prison for two or three years who are addicts when they go in, and that when they get out almost immediately they are looking around for the drug again.

Dr. Fraser: Yes.

Mr. Pugh: Are they involuntary patients while they are in jail or in penitentiary?

Dr. Fraser: They are prisoners in jail.

Mr. Pugh: Is there a course of treatment in prison—voluntary or involuntary?

Dr. Fraser: I guess there is at the institution at Matsqui, which perhaps bears certain similarities to programs that have evolved in the United States in Lexington and Fort Worth. I know that they are attempting to institute a treatment program while a person is there and yet, as I mentioned, the relapse rate of people being released from Lexington and Fort Worth hospitals is very great.

Mr. Pugh: There is none in Canada?

Dr. Fraser: Well, in Matsqui, there is...

Mr. Pugh: Matsqui, in B. C.?

Dr. Fraser: Yes. Their experience has not been extensive enough to determine exactly what effects the treatment will have.

Mr. Pugh: In the last statement that you made—I do not have my brief in front of me at the present time—you said that there is a great need to carry out voluntary and involuntary cures...

Dr. Fraser: Yes.

Mr. Pugh: ...at the present time, and I am trying to tie this in with the questions that Mr. Woolliams asked in regard to going to a centre and having the drug available. Would this not be a better thing, as against what you have answered on that in regard to centres where people could go and get these drugs? Do you feel that medical research has not gone far enough and that it is worth going

on at all speed with medical research and trying to get a better rate of rehabilitation, that you probably are putting this line with medical sickness, and that you feel that, just like in many other things, eventually you will find a cure?

Dr. Fraser: I think that eventually we will be able to significantly improve most of the people that come to us. But as I said, if that involved placing them on such a drug as methadone, then certainly you have not cured them of their addiction, but you may have cured an awful lot of other ills in their lives.

Mr. Pugh: Yes. That is like diabetes and insulin; it is a medical cure, not an addiction to insulin, although the patient cannot go along without it. Similarly, as someone mentioned in regard to methadone, there might be harmful after effects, but you feel that it is worth a trial and that we should keep trying.

Dr. Fraser: Yes, I certainly believe very much that all of the approaches which mentioned have to be tried with narcotic addicts who come to us.

Mr. Pugh: I gathered from your remark that the cure without relapse to date has had a very, very small percentage. Is there anything in line with Alcoholics Anonymous in regard to drug addiction?

Dr. Fraser: Yes, there is an association called Addicts Anonymous.

Mr. Pugh: Is there any reported success?

• (12:30 p.m.)

Dr. Fraser: Yes, there is reported success in certain centres where this has developed and, might I say here that you are illustrating the point which I am trying to make that the addicts are not a homogeneous group of people but a heterogeneous group of people. Some are going to respond to Addicts Anonymous; some are going to respond to voluntary out-patient treatment programs such as we have; some are going to respond to the treatment program such as Dole and Nyswander have; some are going to respond when they are put on parole and followed carefully by probation officers; some are going to respond when they are put on probation and put on drug such as methadone and followed daily with urine testing for total drug usage; some are going to respond by certain inspirational approaches which have been developed

certain centres; some are going to respond to Synanon and Daytop Village. All of these programs offer promise of a significant improvement in the life of the narcotic addict. Some of them involve abstinence from drugs such as Addicts Anonymous and Synanon and Daytop Village; other programs do not involve abstinence from a drug. Some are probably going to have to be permanently institutionalized in some kind of treatment centre.

Mr. Pugh: I am in agreement completely with what you said, that you must keep on trying; the only thing that I want to do is tie in the research with the trying.

Dr. Fraser: Yes.

Mr. Pugh: And going along on this business of feeding drugs over a period of time to find out about such things as tolerance and the possibility of cure, have you the figures for instance, on the British experience? Is it working out at all reasonably, either from the point of view of cure or of stopping crime, stopping the drug racket?

Dr. Fraser: I have had different reports; the last reports I have read were those of Lady Frankau, who was reporting considerable success with her treatment program. She aims, of course, to eventually get the person off the drug altogether; but I have heard conflicting reports and have no direct evidence as to the success of the British system.

Mr. Pugh: Thank you, Mr. Chairman.

The Chairman: Mr. Gilbert.

Mr. Gilbert: Dr. Fraser, I notice that in one of the four basic principles on page 2 of the Foundation, it is the voluntary acceptance approach which has had the highest success. If you relate that to Mr. Klein's Bill, Mr. Klein is really taking the involuntary approach; he is having the magistrate determine whether the accused should take clinical treatment before, and then determine whether he should proceed with the offence as charged. So you get the voluntary and the involuntary approach. With the voluntary approach you have not had a very successful record with regard to cure. Do you think it would be worse if you had the involuntary approach?

Dr. Fraser: No, there is evidence and there are studies to show that some involuntary approaches seem to work much better than voluntary. A number of cases who have come

to us either on probation or during the period of their parole have made very good progress in treatment up until the time their probation ends and then they have relapsed, so that putting some external force on a person who lacks internal controls often is essential. There are studies in the United States that indicate perhaps in some patients this is more effective than a voluntary outpatient approach.

Mr. Gilbert: You have said, "heterogeneous group" with regard to the drug problem and I think studies indicate that. If I understand correctly the problem with most people charged with criminal offences—and you are quite right that the type of criminal offence is the non-violent theft, prostitution, pick-pocketing and so forth—is that they are attempting to obtain money to buy the drug.

This is where the narcotic clinics come into effect because if you do that then you are taking away the profit motive from the pusher of the drug. This is why I am rather inclined to approve of narcotic clinics because they take away that profit motive and it thereby may take away the necessity to commit these crimes.

I agree with you that not only are the narcotic clinics necessary, there are other treatments that must go with them. What do you think of the approach of the narcotic clinic to take away the profit motive of the pusher?

Dr. Fraser: Well, of course, people become narcotic addicts from their association with other addicts. Perhaps by accident they happen to be born in a certain area of a city where there is poverty, slum, lack of education and lack of opportunity for employment. Many factors are involved in what makes the narcotic addict. If you are saying that if we just give legally unlimited supplies of narcotic drugs to the narcotic addicts we are going to have no more problems, nothing could be further from the truth.

Mr. Gilbert: You can get what is known as the "get tough" policy approach, you know. You can impose terms of imprisonment on the pushers. Someone said that the analogy with regard to prohibition is that you develop men like Capone and Luciano. I think probably we are developing the same type with regard to drug pushing and to me this brings up the necessity for these clinics, that

control the amount of the drug given to the person. In other words, it seems to me that you have to get the pusher out of the market.

Dr. Fraser: And do not forget that many addicts themselves are pushers who are pushing the drug to support their own habit.

Mr. Gilbert: That is right. I wonder if I could just ask one final question, Mr. Chairman? We have been talking about a cure. Should we not really start talking about prevention? Is this not the whole basis of it? I do not know what educational films or material we have that might be shown to high school students and college students which would do away with the necessity of the so-called "kick" they are looking for. What would you suggest along those lines?

Dr. Fraser: I think the problem in education is to develop programs which result in effective education. I think in Britain with regard to tobacco there is no question that many educational and national programs were established to educate people about the dangers of cigarette smoking, and yet the consumption of tobacco has continued to rise in the United Kingdom as you know.

I suppose one bases these programs on the belief that all people are sensible and logical, and if you tell them if they do this it is going to be harmful to them, then they are not going to do it. But people are not necessarily always sensible and logical and perhaps very few people are. So there are many factors involved in prevention. Certainly, I agree with you that prevention is one of the most important, if not the most important, aspect of this entire problem and therefore it becomes a problem for the entire community at large to do something about the areas where narcotic addiction is generated.

Mr. Gilbert: It is really not a question of legislating the morals in this province. Here you have a drug that really affects the physical and the mental health of a person. It is really not morals that we are legislating for. Mr. Woolliams was trying to indicate it concerns morals. Do you think it is morals? Surely it goes beyond that.

An hon. Member: You could not legislate morals.

Mr. Gilbert: You could not legislate on it; that is right. It seems to me that...

Dr. Fraser: Are you asking me whether think drug use is a moral problem?

Mr. Gilbert: No; all I am saying is that Mr. Woolliams said you could not legislate morals, you see. I am saying that we can legislate on something that really goes beyond morals because drug addiction affects the physical or mental well-being of person.

Mr. Klein: And his family and society.

The Chairman: I think Mr. Woolliams did take that additional step.

Mr. Gilbert: Did he?

The Chairman: That is what I understood in his questions at any rate.

Dr. Fraser: Certainly your opinion would not be shared by Dole and Nyswander who are administering high doses of a synthetic long acting narcotic substance to people. They are not administering this to people with a view to giving rise to physical and mental damage to them and, if we can have any confidence in their preliminary report, no organic or mental damage has been shown to result in people taking this drug on a long term basis and the effects seem to have much benefitted society.

● (12:40 p.m.)

Mr. Gilbert: Thank you Mr. Chairman.

The Chairman: Mr. MacEwan and the Mr. Klein.

Mr. MacEwan: Doctor, who supports the research foundation with which you work?

Dr. Fraser: The provincial government supports the foundation.

Mr. MacEwan: The provincial government of Ontario.

Dr. Fraser: The narcotic addiction unit of the Alcohol and Drug Addiction Research Foundation received some federal support for a certain length of time but I believe it is entirely provincially supported at the present.

Mr. MacEwan: I see. And are there any similar foundations throughout Canada that you know of?

Dr. Fraser: There is only one other narcotic addiction unit in Canada and that is located in Vancouver.

Mr. MacEwan: I see. You mentioned that you visited Staten Island?

Dr. Fraser: Daytop Village.

Mr. MacEwan: And who supports the activities there?

Dr. Fraser: It was initially supported by the National Institute of Mental Health but whether they continue to support it or whether it gets finances elsewhere I do not now.

Mr. MacEwan: I see. Do you think this is such a serious problem that the foundation research that they are doing should have national support in Canada?

Dr. Fraser: Yes, I certainly do believe that.

Mr. Klein: Dr. Fraser, I think you have established that a drug addict is a sick person.

Dr. Fraser: Yes, I very much believe that a drug addict is a very sick person.

Mr. Klein: And not a criminal.

Dr. Fraser: He may be both.

Mr. Klein: But you would call a person who is addicted to drugs *per se* to the point where it is so compulsive that he must have it, a sick person and not a criminal.

Dr. Fraser: Yes, I would call him a sick person.

Mr. Klein: As opposed to a criminal.

Dr. Fraser: As opposed to a criminal.

Mr. Klein: Personally, I think you have been very modest in the matter of the institution you come from. Would you say that if your institution were given larger sums and your facilities for confinement were increased your record might be a lot better than indicated today?

Dr. Fraser: There is no question in my mind that if we could develop the type of comprehensive program that I outlined to you, which would necessitate an increase in facilities and staff—it is not easy to get very competent staff to work with the narcotic addict—we could do a much more effective job than we are doing now.

Mr. Klein: Would you say that this is the road to the future rather than incarceration?

Dr. Fraser: Absolutely.

Mr. Klein: You are convinced of that?

Dr. Fraser: Yes.

Mr. Klein: Would you not say that if we can supply jails in our society we can supply clinics?

Dr. Fraser: I suppose so.

Mr. Klein: It is appalling to hear that there are only two clinics in Canada. Is it not correct that if these clinics were established a lot of the unanswered questions could be answered because of the work that would be done by these clinics...

Dr. Fraser: Yes.

Mr. Klein: ... which are now not available. Would you say, Dr. Fraser, that incarceration would be the last resort or no resort at all?

Dr. Fraser: I personally do not believe that sick people should be incarcerated.

Mr. Klein: I just have a few more questions. You spoke of an educational program in respect of cigarette smoking in the United Kingdom. I am not making a crusade against tobacco but just giving you an illustration. You seemed to indicate that the educational program failed in England. Might it not have failed as a result of the fact that cigarettes are commercially advertised on radio, television, in the newspapers and so on? You might say, there is a sort of counter-educational fight going on.

Dr. Fraser: I certainly do believe that advertising tobacco and other things which we know to be harmful, when associated with the popular imagination that they do associate cigarette with smoking, does something to encourage people to smoke.

Mr. Klein: But does not the fact that the government, on the one hand says, "do not smoke because it is harmful to you" and on the other hand, receives great returns in the form of taxation from the sale of cigarettes, indicate an imbalance somewhere?

Dr. Fraser: I think so.

Mr. Klein: Let us go to another area of prevention. Someone asked how we prevent this, which was a very good question. Perhaps if I had presented this Bill now I might have presented it very differently from the manner in which I did. At the time I felt

that we ought to deal with the sick people. On the question of avoiding a situation, what do you do to stop people from becoming addicts or participating in drugs or marijuana? I think marijuana encourages people. Even if it is eventually proven to be non-addictive it certainly encourages adventure on the part of the person that uses it; they might want to have a higher feeling from a higher drug.

As a preventative measure would you not think that it might be an idea, even though it might be a traumatic experience to some youngsters, to take the teen-agers, the 14-year-olds and the 13-year-olds—because that is the age bracket in which I understand education has to begin—to clinics like yours and show them the depths to which addiction leads people; and do you not think that that might have a more educative effect on them than any film or literary tract?

Dr. Fraser: Yes, I certainly think with regard to narcotic addiction that if one knew the kind of life the narcotic addict leads when he is heavily or moderately addicted to heroin it would tend to discourage his use of it.

Mr. Klein: You would not be opposed to having youngsters visit clinics to see what happens to people when they become addicted?

Dr. Fraser: This would depend upon the patients, whether they wanted to...

Mr. Klein: To be exposed.

Dr. Fraser: ...to be exposed to spectators. May I be permitted to elaborate for a moment? In this regard, we know that in the United States narcotic addiction arises in the most underprivileged areas where there is lack of housing accommodation, the slum areas, where there is overcrowding, a lack of education, a lack of opportunity, family disruption, where you have minority groups of people and where you have a supply of addicting drugs which are pushed.

Mr. Klein: Yes, but that is falling by the wayside now because the campus is being attacked. These drugs are now being filtered into the campus and that is where I say the danger of the decadent society begins. It has been said, for example, that juvenile delinquency usually occurs in areas such as you spoke of, the slum areas. However, statistics indicate that it is not confined any longer to

the slum areas but has spread into the middle and upper class areas of society because of marijuana and because of drug addiction.

Dr. Fraser: You are not suggesting, however, that narcotic addiction is common on the campus, are you?

• (12:50 p.m.)

Mr. Klein: No, I am not saying that narcotic addiction is common on the campus but I am saying that marijuana on the campus makes people adventurous to the extent of trying LSD and other forms, to use the vernacular, "of taking a trip". Youth is asking for the truth about marijuana but I do not think there is anybody that can give them the truth at this time because I think it is too early to make such an assessment. Do you agree? The parents of this country are very concerned about the fact that their children may be participating in the use of marijuana. It is in the area of the campus and the high school that the great problem exists, I think in the future control, or prevention, that has been spoken of previously in this Committee. This is the area that must be attacked. We have to get to the 13-year-olds and the 14-year-olds. We should not allow them to sniff glue, for example, without explaining to them what you have just explained to us. Why should not teams go to the high schools now and tell the children what you have told us? Children are not going to get copies of the minutes of these proceedings, but perhaps field teams could go and tell children what glue-sniffing can do.

An hon. Member: That might teach them how to do it.

Mr. Klein: But if they were told by responsible people the effects of glue-sniffing on their bodies, and the fact that they could die from it, it might have an effect. What we are doing is just simply sitting back and letting this thing happen; and we are not doing a thing about it.

Do you favour visiting the universities and high schools and explaining these programs to them and inviting them to come to your clinic?

Dr. Fraser: I do not favour inviting every one to our clinic, no. I do favour education which is designed to prevent. However, we must remember that many people who use drugs do so because they have certain psychological disorders. Education on a drug is not going to cure the psychological disorders.

Perhaps there is a need to detect the person who may be vulnerable to development of an addiction in the later years of his life.

Mr. Klein: I want to ask you one last question, doctor, on the distinction between the drug addict and the criminal, if there is one. Let us suppose that there is, and that a judge, or a magistrate could, in his own mind, make the distinction, in the person appearing before him, that he is a pure addict and not a criminal; in other words, a sick person rather than a criminal...

Dr. Fraser: I really do not understand what you mean, because surely I could be an alcoholic and also be a criminal.

Mr. Klein: Yes.

Dr. Fraser: If I am an alcoholic and I go and rob somebody's store I am also a criminal.

Mr. Klein: That is correct; you are right. What is why I am trying to make a distinction. Suppose a man is arrested because a syringe is found on him.

Dr. Fraser: Yes?

Mr. Klein: He is arrested without having committed any crime, and he is brought before the magistrate. If it is proven that he used that syringe do you think the solution is to throw that man into jail?

Dr. Fraser: I have said repeatedly this morning that I do not think the answer is to throw him into jail.

Mr. Klein: You would be opposed to it?

Dr. Fraser: Yes, I would be opposed to it.

Mr. Klein: That is all.

Mr. Aiken: My question may have been asked in another way, but I would like to ask it. Are there addicts who cannot be helped medically or therapeutically.

Dr. Fraser: Certainly with known and presently existing treatment methods there are some addicts whom we are not going to be able to help. This is true of most diseases which we have known throughout medical history.

Mr. Aiken: In such a case is there any real alternative? If they are pushers, or are influencing others, is there any alternative to confining them?

Dr. Fraser: For some addicts there is, at the present time no alternative to some form of confinement. However, I personally believe that where a person is confined they should have available to them at least the best possible known treatment. A person confined must be afforded the opportunity to get well.

Mr. Aiken: Is an effort being made now to distinguish these two groups of people—those who can be helped and those who really cannot be because of their continual return after their release from confinement?

Dr. Fraser: I do not believe that we can predict, in the case of persons coming to us, whether one is going to respond to treatment and another is not. I think we do sometimes know that certain individuals will not respond to, say, our type of treatment, but this does not mean he is not going to respond to another type of treatment such as I outlined earlier. Therefore, a wide variety of treatments is what is needed to meet a significant percentage.

However, I would agree with you that even then there are going to be some addicts whom, with our existing treatment methods, we are not going to be able to help.

Mr. Aiken: Is there any rule-of-thumb indication of who these people would be?

Dr. Fraser: No.

Mr. Aiken: I am referring to a person who perhaps has taken the cure two or more times and returned to addiction. There is no rule-of-thumb way in which you can judge this?

Dr. Fraser: No, there is no rule of thumb by which we can judge this. We have been, I think personally, of greater benefit to, and have had greater success with, patients falling into the older rather than the younger age group. But when I was at Daytop Village, for example, most of those who were in that kind of a treatment-setting—they do not apply the word "treatment", but it is treatment—were a much younger group of people.

Mr. Klein: May I ask one last question? If an addict is brought before a judge, as in the example I gave you, with, say, a syringe in his possession, would you think it a good idea for the judge, in determining that case, to consult with an institute such as yours about what might be done with this chap before he throws him into jail?

Dr. Fraser: Provided the community is prepared to provide sufficient facilities and staff to enable them to give advice to the court.

Mr. Klein: If the man is regularly and faithfully taking treatment at your institution and then is brought before a judge do you think that it would be harmful to incarcerate that man and deprive him of the treatment? Would it be better that he continue?

Dr. Fraser: If it has been demonstrated that he is making good improvement...

Mr. Klein: ... he should not be incarcerated?

Dr. Fraser: ... he should not be incarcerated.

Mr. Pugh: Doctor, apart from those whom you have classified as incurable I rather gathered that, although drug addiction is a medical thing to start with, there are other things behind it—medical as well—which would make them incurables. Reverting to this idea of centres, if you had a method of control would that not, in the end result, give you the basis for fairly thorough research? In other words, what we are seeking is some form of cure, or the possibility of one. You cannot do it without research. Do you not think that a centre of some sort is possibly the best way to get research with control? I do not mean just handing it out, but with control. Everybody who comes before you has a case history, and unless you have these case histories you are certainly not going to benefit from any sort of casual research?

Dr. Fraser: No.

Mr. Pugh: Well, in that light do you not think that possibly centres could be established, not to provide drugs but, in the end result, to provide a cure. If you find a cure you can eventually do without your centres.

Dr. Fraser: I think we are going to have to work a very long time at this. When you use the word "cure" I have difficulty in knowing exactly what you mean. I will illustrate that difficulty this way. For example, a person may even be cured through narcotic control methods which have been implemented. It may be, because of action by the police, that very little heroin is available in a city for a heroin addict. What does he do when this is not available? He turns for help to other drugs such as barbiturates, amphetamines and alcohol. You may have cured him of his heroin addiction but if afterwards he is left an alcoholic living on skid row, you certainly have not accomplished anything.

Mr. Pugh: This all leads me to believe that you feel all we want to do is control this thing. No cure is available now nor will a cure be available. I rather feel the other way around. I believe that if this can be called a medical matter that in the end we will somehow or other find a cure for it although, like thousands of things that have gone on in the medical history of this world it may take years.

Dr. Fraser: Idealistically I think we must look toward a cure, yes, but I think it is a long way off. Man has been treating chronic bronchitis for many, many years but we certainly do not have a cure for it yet. Narcotic addiction has only been treated on this continent for a few years. I agree with you in principle, sir.

Mr. Gilbert: Mr. Chairman, I have one short question. Is there a simple test to determine if the person is a drug addict?

Dr. Fraser: You usually determine whether a person is a drug addict or not by taking history and carrying out a physical examination. Although a person may be a drug addict he may not have been using drugs for possibly a week and you might bring this person into a clinic and examine his urine for the prevalence of narcotic substances or give him what is called a nalline test, which has a certain effect on the diameter of the pupil of a person who has used narcotic substances recently, but just because you find the presence of heroin or another substance it does not mean that person is an addict. There is no simple test. You have to combine these methods with what is still the best method—the physical examination and history.

Mr. Gilbert: Thank you very much, doctor.

The Chairman: Dr. Fraser, I would like to thank you on behalf of the Committee for the masterly way in which I thought you handled the somewhat extended questioning. I think we have quite thoroughly explored a lot of the problems of the narcotic addict and for one I feel that I have learned a lot and believe the members of the Committee feel the same way. On their behalf I wish to thank you most sincerely.

At our meeting on Thursday at 11 o'clock we will have as our witness Dr. James Newman, a psychiatrist from the Jewish General Hospital in Montreal. This meeting is now adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

THURSDAY, NOVEMBER 23, 1967

RESPECTING

The subject-matter of Bill C-96,

An Act respecting observation and treatment of drug addicts.

WITNESS:

Dr. James Naiman, Assistant Professor of Psychiatry,
McGill University.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest
and

Mr. Aiken,	Mr. Honey,	Mr. Otto,
Mr. Brown,	Mr. Howe (<i>Hamilton</i>	Mr. Pugh
Mr. Cantin,	<i>South</i>),	Mr. Stafford,
Mr. Choquette,	Mr. Latulippe,	Mr. Tolmie,
Mr. Gilbert,	Mr. MacEwan,	Mr. Wahn,
Mr. Goyer,	Mr. Mandziuk,	Mr. Whelan,
Mr. Grafftey,	Mr. McQuaid,	Mr. Woolliams—24.
Mr. Guay,	Mr. Nielsen,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,

WEDNESDAY, November 22, 1967.

Ordered,—That the name of Mr. Howe (*Hamilton South*), be substituted for that of Mr. Scott (*Danforth*), on the Standing Committee on Justice and Legal Affairs.

WEDNESDAY, November 22, 1967.

Ordered,—That the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions of the following Notice of Motion: That, in the opinion of this House, the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.—(Notice of Motion No. 20).

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

THURSDAY, November 23, 1967.

(11)

The Standing Committee on Justice and Legal Affairs met at 11.20 a.m. this day. The Vice-Chairman, Mr. Forest, presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, Guay, Howe (*Hamilton South*), MacEwan, McQuaid, Pugh, Tolmie and Mr. Wahn (12).

In attendance: Dr. James Naiman, Assistant Professor of Psychiatry, McGill University and Psychiatrist at the Jewish General Hospital in Montreal.

The Committee continued its consideration of the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*).

The Vice-Chairman introduced the witness, Dr. James Naiman, Assistant Professor of Psychiatry at McGill University. Dr. Naiman delivered a prepared statement entitled *The Problem of Addiction*.

The Vice-Chairman announced the names of two additional witnesses who have been invited to appear before the Committee in connection with the subject-matter of Bill C-96.

On a motion by Mr. Aiken, seconded by Mr. Tolmie,

Resolved,—That reasonable living and travelling expenses be paid to Miss Isobel McNeill and Dr. B. Cormier who have been called to appear before this Committee in the matter of Bill C-96, on November 28, 1967, and November 30, 1967, respectively.

Concerning the subject-matter of Bill C-4, (*An Act concerning reform of the bail system*), the Vice-Chairman referred to a communication dated November 21, 1967 from Mr. Mather, M.P. Mr. Mather enclosed a copy of a report entitled *Pre-Trial Release Practices In Sweden, Denmark, England And Italy To the National Conference On Bail And Criminal Justice*. The report appears in the Journal of the International Commission of Jurists, Winter 1964. The Vice-Chairman also referred to articles by Peter K. McWilliams, Q.C., Crown Attorney, County of Halton, Ontario. The articles appear in Volumes 8 and 9 of the Criminal Law Quarterly, and are entitled *The Law of Bail*.

On a motion by Mr. Cameron (*High Park*), seconded by Mr. Howe (*Hamilton South*),

Resolved,—That the copy of the report submitted by Mr. Mather on the subject of Pre-Trial Release Practices, and copies of the articles by Mr. McWilliams on the subject of bail, be filed as Exhibits (*Exhibits C-4-2, and C-4-3 respectively*).

Returning to the subject-matter of Bill C-96, the members questioned Dr. Naiman on the problem of addiction, for the remainder of the meeting. The

Vice-Chairman thanked the witness for his competent and informative testimony.

The Committee adjourned at 1.00 p.m., until Tuesday, November 28, 1967 at 11.00 a.m. The next witness will be Miss Isobel McNeill of Toronto.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, November 23, 1967.

The Vice-Chairman: Order, please. This Committee is considering again this morning Bill C-96 sponsored by Mr. Milton Klein. The subject matter is the observation and treatment of drug addicts.

We have with us this morning as our witness Dr. James Naiman, who is Assistant Professor of Psychiatry at McGill University. Dr. Naiman graduated in arts in 1945 and in medicine in 1949 from McGill University. He interned at Bellevue Hospital in New York and the Queen Mary Veterans Hospital in Montreal.

From 1952 to 1954 he was the Assistant Resident at the Montreal Neurological Institute, the Allan Memorial Institute and the Montreal General Hospital. He holds certificates and a diploma in psychiatry and has received training in psychoanalysis. He is a member of several psychiatric associations and has published several scientific papers on subjects relating to his specialized field of medicine. Dr. Naiman is an Associate Psychiatrist at the Jewish General Hospital and an Assistant Professor of Psychiatry at McGill University. Dr. Naiman, we are very glad to have you with us. As usual I suppose you have a statement and then you will be available to answer questions by members of the Committee.

Dr. James Naiman (Assistant Professor of Psychiatry, McGill University): Mr. Chairman and gentlemen, I should like first of all to state how deeply honoured I feel to have been asked to appear before your Committee. I consider it a grave responsibility with which I have been entrusted and hope to be able to live up to it.

(11:20 a.m.)

The difficulty of my task is well stated in an article which appeared in July, 1967 in a journal published by the World Health Organization (1). This article quotes the title of another article which appeared in the Journal of the American Medical Association, the

title being "Drug Addiction: Crime or Sickness", as illustrating the problem of reconciling the attitude of the medical profession and that of society in its entirety towards the victim of drugs. The WHO article goes on to say that to the WHO and to the greater part of that portion of the medical profession which is specialized in this area the user of drugs is a sick person who must be treated like any other sick person. However, even when governmental authorities agree with this point of view, their acts are not in conformity with it. A drug addict may be considered, on paper, as a sick person but, and this is true in many countries, when he is found in possession of drugs or of a syringe, it is to the penitentiary that he is sent for a period of several years. But how would it be possible to be a drug addict without being in possession of drugs or of equipment connected with it? Never has the breach between the medical profession and the organized powers of society been greater or more evident.

Before proceeding any further I should like to state that I have personally received the greatest possible cooperation from legal authorities in individual cases. In the past year, we have embarked on a pilot project of treating a small number of drug addicts at the Jewish General Hospital in Montreal. It has been our experience that, in every instance where a criminal charge has been pending against an individual under our care, the legal authorities when informed that an individual was under our care have decided not to proceed with the charge, even though we have scrupulously refrained from requesting this, my position being that if one disagrees with a law, one should endeavour to have it changed rather than ask a court of law to make an exception in a particular case.

I should like to consider the problem before us under three headings:

1. Is narcotic addiction an illness?
2. If so, and I do believe it to be so, what kind of an illness is it?
3. What kind of legislation would be most appropriate in dealing with this particular illness?

Let me add immediately that I do not consider legislation to be the only important aspect of the problem. No change in legislation is likely to be useful if it is not accompanied by provision for adequate medical facilities for the treatment of addicts. It makes very little sense to state that the proper place for an addict is a hospital or a clinic rather than a penal institution unless there are suitable—that is, staffed with competent personnel—hospitals and clinics ready, willing and able to accept the addict who is referred to them for treatment.

At the risk of being accused of maligning the much abused general practitioner, I should like to state my position that the treatment of drug addicts is an exceedingly difficult matter, probably best carried out in specialized facilities, preferably affiliated with university teaching hospitals.

The statement that addiction to narcotics is an illness is hardly, to a medical man, a revolutionary novelty. For the next while, I shall quote liberally from a book on drug addiction written in 1962 by Dr. Lawrence Kolb (2).

Dr. Kolb's qualifications for expressing views on this subject are the following: He spent 36 years in the United States Public Health Service, his tours of duty including an assignment to the Hospital for Narcotic Drug Addicts at Lexington, Kentucky. He was assigned to study all phases of drug addiction from 1923 to 1928. From 1951 to 1962 he devoted himself to further study in this area. At the present time, he is Professor and Chairman, Department of Psychiatry at the College of Physicians and Surgeons, Columbia University, Director, New York State Psychiatric Institute and Psychiatric Service, Presbyterian Hospital of New York. This year, Dr. Kolb is the President of the American Psychiatric Association.

Among the statements Dr. Kolb makes in his book are the following:

1. Drug addiction is a symptom of a mental disease, it is not the perversity of an evil character, and its treatment does not yield simply to moral persuasion.

2. One should:

- (a) continue to apply legal restrictions on the purchase and distribution of narcotics.

- (b) Provide addicts with treatment for withdrawals from drug use and assistance in dealing with the social and emotional factors that contribute to it.

3. There is nothing about the nature of drug addicts to justify their treatment as criminals.

4. We are in urgent need of laws that place the treatment of patients with narcotics unequivocally in the hands of physicians. We must have laws that permit physicians to administer opiates or likeacting synthetics regularly to patients.

The desirability of a change in attitude towards the addict was also stated recently by a leading Canadian psychiatrist, Dr. Travis Dancey (3), Chief of the Psychiatric Service at the Queen Mary Veterans Hospital in Montreal. Commenting on some recent work by Drs. Dole and Nyswander of Rockefeller University in New York, Dr. Dancey stated "they have contributed remarkably to a gradual change in attitude towards the addict himself to the end that he will eventually be looked upon as a human being with troubles rather than a sort of leprous parasite as is almost universally true at present. This change in attitude may permit efficient treatment of the narcotic addict to be carried out in settings of more human type than heretofore considered possible."

The undesirable effects of a correctional setting in dealing with narcotic addicts was recently stated by Dr. D. Craigen (4) at the annual meeting of the Canadian Psychiatric Association in 1966. Dr. Craigen, who is on the staff of the Matsqui Institution, a correctional facility for narcotic addicts in British Columbia, stated in part: "Placing an individual in a correctional setting can be, and often is, antitherapeutic. Too often, pathological behaviour occurring within an institution is the result of institutional experiences, rather than a manifestation of the problem areas which predisposed and precipitated the inmate's commitment."

Careful studies in recent years have added to the amount of factual information we have about addicts.

A study by Vaillant (5) in 1966 of patients formerly hospitalized in Lexington, Kentucky, indicated the following:

1. the average addict remains addicted for a decade or more.

2. By age 42, only one quarter of those initially addicted were still using narcotics.

3. The suicide rate was two to five times the expected one for a population of that age.

4. The addicts remained physically healthy.

These observations seem to warrant the following conclusions:

1. There is a tendency towards spontaneous recovery in addicts as they get older. This is in contrast to alcoholism which, as far as I know, tends to get worse.

2. The high suicide rate would appear to constitute factual support for the view that these people are psychiatrically ill.

Richman (6), in Canada, in a study published in 1966, arrived at the conclusion that 20 per cent of so-called "criminal addicts"—those are people who have received convictions for offences relating to narcotics—will give up their addiction over a five-year period, and that the prospect for abstinence increases with age of the addict.

A number of current investigations have direct relevance to the issue of treatment.

1. Vaillant (7) found that 96 per cent of all addicts who sought voluntary hospitalization for addiction at Lexington, and the majority of whom remained in hospital for relatively short periods (less than three months), relapsed. On the other hand 67 per cent, of those who received at least nine months of compulsory hospitalization and a year of compulsory supervision were abstinent from drugs for a year or more.

This finding would support the view that compulsory hospitalization in a suitably staffed institution plus compulsory supervision is one effective approach to the problem of addiction.

2. The outpatient treatment of addicts.

The treatment of addicts on an outpatient basis has been considered an exercise in futility until recently.

These are, however, indications that this pessimism may be unjustified, although it is too early to make any final decision in this regard.

Dole and Nyswander (8) have reported encouraging results with methadone. Methadone is a drug which is classified as a narcotic in both the United States and Canada. It differs from heroin in that it does not produce euphoria. Dole and Nyswander have been able to restore to useful, productive lives a very high proportion of previously unemployed and more or less derelict addicts by maintaining them on a regulated amount of methadone. This cannot be considered a cure of addiction in the sense that methadone is

itself a narcotic. It is, however, a social cure in that these individuals lead useful, productive lives.

Another drug which has shown promise is cyclazocine. This drug is considered a narcotic in Canada but not in the United States. It has been successfully used in the treatment of addicts by Jaffe (9) and others.

The effect of this substance is to block the effect of heroin, so that even if the patient takes it, he experiences no effect. In time, he stops taking it. According to the law, possession of alcohol is permitted, possession of a narcotic is a crime. A lengthy discourse on the dangers of alcohol would be out of place here, but I should like to quote a few statistics: Hayrer and Albers (10) examined the bodies of pilots in 158 fatal general aviation accidents which occurred during 1963 and found an excessive amount of alcohol, over 15 mgm per 100 ml of blood—the maximum permissible is about 80; anybody over 80 is, in effect drunk—in the bodies of 35.4 per cent. Recently, Selzor and Weiss (11) found that of 72 drivers responsible for fatal traffic accidents in a Michigan county, 40 per cent were alcoholic. They were chronic alcoholics. There are other figures which tend to run around 30 per cent.

• (11:30 a.m.)

It seems to me that the drastic difference between the attitude towards alcohol and that towards narcotics is not supported by such facts as are at our disposal.

I should like to suggest that the real distinction to be made is not between one drug affecting the central nervous system and another—alcohol is, of course, a drug which affects the central nervous system—but rather between the use of a drug and its abuse, or excessive use.

I would suggest that the law should recognize that any person who used to excess any drug which affects the central nervous system is a psychiatrically sick person, and that such a person should receive treatment, voluntarily if possible, involuntarily if necessary. The principle of involuntary commitment of certain mentally ill persons has been recognized for a long time.

The crime of "possession" of a drug, which really means its use, should be eliminated from the criminal code.

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The Vice-Chairman: Thank you, Doctor. Before we proceed to question our distinguished witness, I think we should deal with a few matters in case we lack a quorum later on. I wish to report that there was a meeting of the Steering Committee last November 21. Next week's witnesses on this Bill will include Miss Isabelle McNeil, who will appear here on Tuesday, November 28. Miss McNeil is a Special Research Project Officer, Alcohol and Drug Addiction Research Foundation, Toronto. Next Thursday we will have Dr. B. Cormier, Associate Professor, McGill University Clinic, Forensic Psychiatry Section.

Could I have a motion that reasonable living and travelling expenses be paid to the witnesses for next week?

Mr. Aiken: I so move.

Mr. Tolmie: I second the motion.
Motion agreed to.

The Vice-Chairman: On the matter of Bill C-4, presented by Mr. Mather concerning the bail system, Mr. Mather has sent us a report on pre-trial practices in several European countries. This report appeared in the *Journal of International Commission of Jurists* the winter of 1964 and it contains material that he wishes the Committee to look at.

We also have an article here by Mr. P. R. McWilliams, Crown Attorney, County of Hamilton, Ontario who published an article on *The Law of Bail* which could be useful to the study of this matter. Are there two different articles?

The Clerk of the Committee: Yes.

The Vice-Chairman: Could we have motion that these papers be made part of the file of exhibits concerning Bill C-4?

Mr. Cameron (High Park): I so move.

Mr. Howe (Hamilton South): I second the motion.

Motion agreed to.

The Vice-Chairman: First on my list for questioning...

Mr. Aiken: There is one other matter, Mr. Chairman.

The Vice-Chairman: Yes, Mr. Aiken?

Mr. Aiken: I think most of the members are aware that we also had another Reference referred to us last night by the House. I suppose the Steering Committee will take up this particular problem. It is the question of compensation for the innocent victims of crime brought on by Mr. Cowan and the House referred it to our Committee. I am afraid I made the suggestion myself. It is going to overload this Committee and I think we will have to consider just where it is going to be fitted in.

The Vice-Chairman: Yes, it is a very interesting bill. I think we should take it up at the next meeting of the Steering Committee. First on my list is Mr. Tolmie.

Mr. Tolmie: Mr. Chairman, I just have two questions. One pertains to the possibility of starting clinics sponsored by the government. I think the evidence so far has been to the effect that although great efforts have been made to cure addicts, a large percentage are incurable, and after treatment they go back to a life of crime in order to obtain drugs.

The suggestion has been made that the Government perhaps should consider setting up a type of clinic where drug addicts could go and obtain drugs under supervision legally, free or at a minimum cost. I would like to get your idea on this subject.

Dr. Naiman: This is really very similar to what Dole and Nyswander are doing rather successfully. My view would be that probably methadone would be the drug employed. I think it should be given under direct supervision in the sense that the addict should not be given any kind of supply of the drug. He would come to the clinic daily and it should be given in liquid form, because these people can put the thing under their tongue and spit out so that all kinds of things may happen. It should be swallowed under the direct observation of a person—it does not have to be a doctor; it can be an attendant or anybody that one feels one can trust.

I think on that basis it makes sense. I think this is what Dole and Nyswander are doing and doing very well. I think the dose has to be definitely set by the doctor and one would not be influenced by the addict's aim that he wants more and so on, and it would be given in this way. I think if that is one it would be a helpful contribution to the problem.

Mr. Tolmie: You would not go along with the proposition that if these people refused that type of care—in a sense that was going to help them—they should be entitled to the actual drug itself, heroin or whatever it might be?

Mr. Naiman: Well...

Mr. Tolmie: Excuse me—just to preface—with the purpose in mind that they are going to resort to crimes in order to get this type of drug anyway, so for the safety of society it would be wiser to provide it for them.

Dr. Naiman: The rate of failure of Dole and Nyswander is extremely low. In the cases they have picked—and they have picked some pretty bad cases—I think the number of people who refused the methadone and went back to heroin according to the last rate was something like 15 per cent, and some of these people have come back to them later on and asked for the methadone. Let me put it to you this way: I do not think it is really necessary to do this. I think if one were to provide methadone in the way in which I

have suggested, probably it would not be necessary to supply them with heroin. Perhaps this is a bit of undue conservatism on my part, but I think I would be happier supplying them with methadone than with heroin.

Mr. Tolmie: Just one more question. You mentioned in your presentation that the Canadian government has established an institution for drug addicts at Masqui, in British Columbia and the attitude seems to be that it has a correctional atmosphere and hence it is not as helpful as it might be. Now, have you any personal knowledge of this institution and if so do you have any personal recommendations which would, perhaps, improve its value?

Dr. Naiman: No, I do not. I have never been there. The only information I have about it is Dr. Craigen's rather extensive article. I think the staff is doing the best it can. I think the real issue there is not so much the question of the way the place is run but, shall we say, the unnecessary labelling of the individual as a criminal. I think the moment you label somebody a criminal you set in motion a series of events which are undesirable in a variety of ways. I am not suggesting that the atmosphere of mental hospitals is always ideal. I think some of us saw the movie *The Snake Pit* which appeared a number of years ago. Based on what I have read, I think this institution could probably be, let us say, changed into a psychiatric hospital and, with relatively little modification, used for the treatment of addicts. I think it is a question of labelling and some other changes; let us say the kind of changes which in time are being introduced in mental hospitals throughout North America.

• (11:40 a.m.)

Mr. Tolmie: Just one related question to this and that is all. If this is a pioneer attempt to treat addicts in a humane manner, as I assume it is, would you not think that some responsible body should be examining more closely the actual results attained at this institution?

Dr. Naiman: This, of course, would be for the purpose of assessing its values and this would perhaps determine this type of institution we would develop in the future. In other words, we should not build more of them if

we do not know how this one is actually accomplishing its purpose.

Dr. Naiman: You see, we have information on how Lexington is performing. I gave you some figures on what happens to people who have been in Lexington. I think that one can use that, shall we say, as a kind of yardstick. Obviously you see these follow-ups for a number of years and I would feel reasonably certain that the people in charge of this institution will in time be concerned with the kind of results they are obtaining and try to follow up their former—whatever you want to call them—inmates or patients in order to determine what happens to them.

You see, there are really two issues. It is very easy to take somebody off drugs in a closed setting. The medical procedure for taking a drug addict, somebody who is on heroin, and getting him from the medical standpoint to the point where his body no longer needs the drug and he can function without it takes about twelve days. When Dr. Kolb, whom I have quoted, was at Lexington he developed a fairly standardized glutenize technique. You just follow what Dr. Kolb says and in twelve days, without undue suffering, the addict is off. The question is what do you do with him afterwards? How long do you keep him in a hospital setting? How long do you keep him in a supervised out-patient setting? Once you get him out there is then, of course, the possibility of a relapse, and then the question arises what are you going to do if he relapses once? Some failure rates have been calculated on the basis of a person who has relapsed and took the drug once. I think this is ridiculous. If they are going to talk about relapse rates it should be what percentage of these people will be taking drugs let us say, five years later and how much of the time are they going to be taking them?

If one thinks in those terms one can actually get to recovery rates, let us say, with the existing facilities of Lexington, which is the prime one in the United States, and looked at from that standpoint the figures are not that bad. I have some actual figures from a paper by O'Donnell which I chose when I was reviewing the literature on the subject and when one considers this from the standpoint of periods of time that people are away from drugs one can get up to percentages as high as 76 per cent that these people have drug-free periods. As I said before, it seems to get

less with age anyway, so that one can help them for certain periods by perhaps re-hospitalizing them at certain points. One of the points which I made, and on which the evidence is fairly conclusive, is that time works in one's favour anyway. This is where I think the concept of recidivism in the criminal law goes very much against the medical facts, in the sense that by the time someone has committed his fourth offence it is probably the last time he will do it anyway.

Mr. Tolmie: I do not want to belabour the point but this is my question. We have in Canada at the present time an institution designed to assist narcotic addicts. Has the government or interested organizations such as the one you represent made any studies to see whether it is effective or not? In other words, is it just going on—

Dr. Naiman: I am sorry, I cannot answer that question.

Mr. Tolmie: Would it not perhaps be sensible if you or your organization projected itself into this particular sphere and analysed it? It seems to me rather strange that we should continue to construct institutions similar to this one without knowing their purpose and effect. I was wondering if perhaps you or your group or yourself would not be more interested in the practical aspect of the actual conditions and results of this institution?

Dr. Naiman: I must confess ignorance as to how long this institution has been in existence but I think that any study of its results would only be meaningful, let us say, at the five-year point. In other words, what happens to the people who have been in the institution five years after they have left it. I am merely confessing ignorance, I do not know if there are enough people available at this time to permit such a study.

Mr. Tolmie: That is what bothers me, Dr. Naiman. You do not know and I do not know who does know. I am just wondering if something should not be started immediately. This type of survey might be in process now. I do not know, I am just throwing that out as a suggestion.

Dr. Naiman: My guess would be that anybody who is in charge of an institution of this kind is concerned about relapse rates, re-admission rates, and so on. My guess would also be—and I can only guess—that

ie people involved in this institution are probably doing what you are suggesting could be done.

Mr. Tolmie: Thank you.

The Acting Chairman: Mr. Aiken?

Mr. Aiken: I also have two questions. When I heard your paper read, my first conclusion was that you felt that alcoholics and drug addicts were poles apart both in their rate of recovery and their symptoms while they were using the drug or alcohol, but on page 8 of your brief you state:

It seems to me that the drastic difference between the attitude towards alcohol and that towards narcotics is not supported by such facts as are at our disposal.

I want to ask you about your use of the word "attitude". Do you refer to the difference between the public attitude and the medical attitude?

Dr. Naiman: I am referring here, I think, to the public attitude and also to the legal attitude. You see, the figures I have quoted suggest that in some respects alcohol is more dangerous than heroin. I wish to be very careful about the choice of words "in some respects". I do not want to be quoted as saying that alcohol is more dangerous than heroin, period, but in some respects I think it is and yet the Criminal Code is the other way around. This is the point. I have already given you statistics about airplane and traffic accidents. I could also give you statistics with respect to violent crimes. You mentioned something about the crimes committed by addicts. Generally speaking, crimes committed by addicts are very minor. Heroin does not make people into criminals per se. The crimes of addicts are usually petty, such as shoplifting and prostitution and they are trying to get the money with which to pay for the drug. The drug itself does not make them commit crimes. On the other hand, I saw a recent paper which was written about people convicted of felonies in the state of California and 40 per cent of them were using alcohol excessively and I think that a fair percentage of them—I do not know whether the percentage was as high as 40 or not—were in fact intoxicated at the time the crime was committed. So in terms of the danger to society which, as I understand it, is what the law is primarily supposed to be concerned with and not the danger to the

individual alone, in many respects alcohol is worse and yet our Criminal Code is directed the other way.

• (11:50 a.m.)

Mr. Aiken: That leads to my second question. I note from your brief that in general the addict remains physically healthy whereas the alcoholic does not. That and various other statements that you made make me wonder whether in those minor cases where addicts are not causing any danger to anyone except themselves it would not be better to leave them alone—especially when we are not yet properly set up to treat a great many of them and some get into the wrong type of institution.

Dr. Naiman: I think this is a reasonable statement to make.

Mr. Aiken: In other words, addiction in itself or the possession of drugs should not be considered a crime unless it can be shown that the public interest is being harmed by their interference with other persons. Would you go that far?

Dr. Naiman: This bulletin showing a fellow smoking opium, going back to 1845, was published by an organism of the Quebec Government which deals with alcoholism and drug addiction. You see there a fellow, lying flat on his back, smoking the stuff. This is really the most likely result of somebody taking heroin in excessive doses. He is not a useful member of society because he is not going to be working. He is not going to commit any crimes, sexual or otherwise. He cannot hold up a bank because he is much too knocked out by the drug to do this sort of thing. So the question of doing something about him I suppose is for his own welfare; he would be better off if he was a more productive individual. However, from the standpoint of society such a person lying flat on his back and ingesting the stuff really is not all that much of a threat.

Mr. Aiken: In respect of any changes in the legislation you are saying that we should be more specific or perhaps more sophisticated in our attitude toward which drug users are actually committing offences against the public—that is, in criminal law, which is what we are considering here.

Dr. Naiman: Yes, I would agree with that.

Mr. Aiken: Thank you.

Mr. Howe (Hamilton South): Mr. Chairman, at the risk of being repetitive, not having been at the previous meeting, I would like to ask some questions. Dr. Naiman, do you feel that this is strictly an illness with no criminal connotations as far as the addiction itself is concerned?

Dr. Naiman: Quite.

Mr. Howe (Hamilton South): Not necessarily the method of acquisition of the drug.

Dr. Naiman: Quite.

Mr. Howe (Hamilton South): And with this method you say that you are not protecting society from him but that you are protecting this individual from himself. Of course there are many other conditions in society that do not have the criminal connotations that this particular disease has, and I am thinking of mental illness and many other things. Your brief is entitled *The Problem of Addiction*. For the record and for my own interest, could you give me in general terms the classes of drugs that relate to addiction?

Dr. Naiman: Do you want the general definition of an addict?

Mr. Howe (Hamilton South): I mean in what class, for example, would you put barbiturates?

Dr. Naiman: May I answer your question in a circumstantial way because I am afraid that is the only way in which I can answer it.

Mr. Howe (Hamilton South): Yes.

Dr. Naiman: You see, the concept of addiction was originally used in relation to narcotic drugs, to the opium and its derivatives. It involved the idea of a craving, it involved the idea of increasing doses of tolerance—the need to use an increasing dose to produce the same effect—and it also involved the idea of physiological dependence. If a person has been taking opium or one of its derivatives for a while and stops taking it abruptly they get such physical symptoms as vomiting, diarrhea, high fever, and they may even die if the drug is removed abruptly. This is the reason for this 12-day regimen that I have mentioned. Now, historically, this is what addiction related to. I think people also spoke of addiction to cocaine, which is not an opium derivative but has somewhat similar properties except that it does not produce this physiological dependence; you can take

somebody off cocaine and nothing dire happens to them. I use the term “addiction” in my paper because this is the word the law uses and this is the word the Bill uses. I think at the moment the view that I am expressing is probably shared by most people in the field, that really we should talk not so much of addiction, which has this fairly precise meaning that I have defined, but of drug abuse. If we speak of drug abuse then of course benzedrine and its derivatives, amphetamines, LSD and marijuana can all be abused, but alcohol is the prime offender. Those are the principal ones. I suppose you have heard of glue sniffing and so on. There is a variety of toxic substances which can be used or abused. If we broaden it in this way and call all this addiction then I think we get so far away from the term's original meaning that probably the substitution of “drug abuse” as more accurately describing what we as doctors are concerned with and perhaps what you people should be concerned with in terms of law, is a more apt term to use.

Barbiturates are a good example. People can use barbiturates in such a way that there is no abuse at all. They may just take a sleeping pill at night, and if they keep to one such pill a night for the next 40 years nothing will happen to them. However, if they take in excess of 400 or 500 milligrams a day, the brain begins to deteriorate, the intellect goes down, and their habits deteriorate. There are of course differences between all these drugs but I think the crucial difference is really between use and abuse rather than between opium derivatives and non-opium derivatives which is what the law emphasizes at the moment. Have I answered your question?

Mr. Howe (Hamilton South): Yes, you have in a sense, Dr. Naiman. You and I are both in the same profession so our interest is medical. Nevertheless, you gave me a nebulous type of medical definition which you and I can accept but which in law is rather difficult to accept because you have to have what is termed a legal definition for addiction before applying whatever treatment or punishment you are going to apply by law. Then again, not being a lawyer I do not know what the legal definition of the word “addiction” is now. I understand that they use simply the word “possession”. If so, would as doctors must come up with more of a legal

definition as to when a person is an addict and need this type of treatment. Then the next question that logically follows is how are we going to enforce it. If we are not going to enforce it by legal means what means are we going to use to apprehend this person so that he can be forced to have treatment?

Dr. Naiman: We do not really have a precise or legal definition of mental illness either and yet we do place mentally ill people in psychiatric institutions against their will. We have managed to do this without really a precise legal definition and, on the whole, I think there has been relatively little abuse of this. I am sure there has been some abuse in individual cases, human nature being what it is.

Mr. Howe (Hamilton South): I think even lawyers make mistakes. The question is how are we going to enforce it? Are we going to enforce it through the medical profession like we do mental illness now, where two doctors for example certify a person as mentally ill?

Dr. Naiman: This would be my suggestion, yes.

Mr. Howe (Hamilton South): I am sorry, Mr. Chairman, if my questions were rather disorganized. Those are all I have for now.

Mr. Pugh: Although most of my questions have been asked I am very interested in one particular line of questioning. Is there a reasonable estimate of how many drug addicts there are in Canada? Is the incidence of drug addiction and the use of drugs increasing? Are there more people using drugs today than previously?

Dr. Naiman: Dr. Craigen gives the actual number in this paper. I am not too far off when I say that around 1964-65 the figure was 3,400.

Mr. Pugh: These are known addicts?

Dr. Naiman: Yes.

Mr. Pugh: Do you think that there are many unknown addicts? To put it another way, do you think many people are using these drugs now on the quiet?

Dr. Naiman: This is of course an exceedingly difficult question to answer. If they are using it on the quiet then of course I do not know about it. I think there are a certain number who do because one sort of hears by

the grapevine. A patient of mine told me that he knows of a very successful business executive who has been on heroin for God knows how many years. This person apparently never got himself into trouble with the law for any reason, and because nobody knows about him he is not included in any of the statistics.

Mr. Pugh: In respect of those voluntary types who come for medical help, is there some bureau to which a doctor must report that a man is taking drugs and has come to him for treatment.

Dr. Naiman: You see, the crime as defined by the Criminal Code is possession rather than use. If a patient comes and says that he is using the stuff this is not, in law, a crime and therefore this is not a reportable condition.

Mr. Pugh: Doctors say that in their experience there seems to be an increase in the number of people using drugs. Is there any general knowledge available?

Dr. Naiman: As far as morphine and its derivatives are concerned, I would say no. I think there is a feeling that the use of LSD and marijuana is becoming more prevalent. I do not think that anybody has really counted heads. One gets a case here and a case there and someone thinks that perhaps there is more of the stuff being used. As far as opium and its derivatives are concerned, to the best of my knowledge there is no evidence of an increase in use at the present time.

Mr. Pugh: What do they do now with criminals who are known drug addicts? When a drug addict is convicted of a crime and goes to prison, is he given any special care?

Dr. Naiman: The Matsqui Institution, in British Columbia, as far as I know, is very interested in this problem. If a drug addict is arrested in Montreal all that happens is that he is sent to jail or the penitentiary for the duration of his sentence, and that is all.

Mr. Pugh: Does he have any special medical help?

Dr. Naiman: No.

Mr. Pugh: In other words, whether he is on opium, cocaine or whatever it might happen to be, he has to live with his own

problem, and if he is really suffering I suppose he goes on the sick list line-up and that is all that is done.

Dr. Naiman: I suppose the doctor in the penitentiary might give him a few doses to help him out, but I really do not know whether or not this is done. I am sure that my successor as a witness, Dr. Cormier, who works at St. Vincent de Paul and has done a good deal of work in penitentiaries, can give you far more reliable information on what happens.

Mr. Pugh: When did the medical profession accept the fact that this is a sickness.

Dr. Naiman: I am trying to think of the date. There have been official statements to that effect from the American Medical, the American Psychiatric and practically every organized medical body that I can think of. I would say that about 20 years would be a reasonable estimate.

Mr. Pugh: Is it not rather an extraordinary thing, Doctor, that when the medical profession has had its mind made up for so long that addiction is a sickness, this thinking has not come down to the penal institutions? If this is so, something should have been done about it long ago. If a man goes to prison and has say, a venereal disease, both the doctors and the prison authorities do something about it. If addiction has been considered a sickness for all this time surely steps should have been taken to provide adequate facilities to care for it. You mentioned certain facilities in British Columbia. I come from British Columbia myself and I know it is a very forward-looking province. But surely to goodness this problem should have been given some attention throughout the rest of Canada.

Dr. Naiman: I fully agree that it should have been done. As I say, I would prefer to defer this question to Dr. Cormier who would be better informed since he works in penal institutions. As far as I am aware, nothing has been done. Those addicts that we have seen and who have spent time in the past in penal institutions do not report. That is really the only information I have because I have never in any capacity set foot in a penal institution.

Mr. Pugh: We have had one or two witnesses say that methadone is harmful because the side-effects and so on are not fully known.

Dr. Naiman: I think the side-effects are very minimal. Before we set up our program at the Jewish General we inquired around a little and were told that people could not function under the Dole and Nyswander program of giving 100 milligrams of methadone a day. I went to New York and spoke to Dr. Jaffe who was using it at the Albert Einstein Medical Centre. He started using it when he was at Lexington and then he used it there. He took me to his lab and showed me four technicians who were doing fairly detailed technical work for him, and he said, "One of these girls is on 100 milligrams of methadone; now take a good look and tell me which one of them it is." I am a reasonably competent physician and I think I can tell when somebody is in any way intoxicated, but that person, from all external manifestations, was functioning perfectly well. I could not tell which one it was and I still do not know.

Mr. Pugh: Is treatment of out-patients and the like effective or should the person be institutionalized?

● (12:10 a.m.)

Dr. Naiman: I am sorry that I again have to hedge. I think, Dole and Nyswander have been conducting their work for the last three years. I have a paper here from a man in Texas who reports a 50 per cent cure rate with selected private patients in his office practice, and this has been going on for the last year or two. As far as assessing the long-term results of out-patient clinic treatment is concerned, I think we will have to wait until the long term has elapsed. At the moment we just do not know. The preliminary results are extremely encouraging and, in my opinion, warrant a continuation of this approach. It will take perhaps 10 years—five years anyway, but probably 10 years—before anybody can really make an authoritative statement.

For instance, the follow-up of Lexington... Vaillant made the study on people who had been in Lexington 12 years before. At that point I think you can obtain reasonably meaningful statistics. When you do something for a year in this kind of chronic condition, all you can report on is whether or not your immediate results are encouraging enough to warrant continuation of what you are doing. To find a cure for appendicitis is relatively easy because something either works or it does not work and you know very rapidly; you know within a few days.

it, if you are dealing with a condition like this, it is perhaps like tuberculosis or diabetes; that is, a very long-term thing, and I think you need a pretty long period before anybody can really categorically state what works and what does not work and in what percentage.

Mr. Pugh: Mr. Chairman, I will pass now.

Mr. MacEwan: Doctor, this is in line with the last question Mr. Pugh asked. On page 3 of your submission you state the following:

... that the treatment of drug addicts is an exceedingly difficult matter, probably best carried out in specialized facilities, preferably affiliated with university teaching hospitals.

I can see this being carried out in larger areas—provincial capitals and so on—where there are universities located. In areas where you do not have these university teaching hospitals, just what could be done there to provide facilities to treat drug addicts?

Dr. Naiman: Fortunately for the situation, the overwhelming majority of drug addicts reside, in fact, in large metropolitan centres; that the catchment area of major hospital facilities really would encompass—I am giving the figure off the top of my head but I do not think I am too far wrong—probably close to 85 or 90 per cent of the total addict population of the country taking, let us say, a 50-mile radius of Vancouver, Toronto, Montreal and so on.

The reason I am mentioning the universities is that I am thinking particularly outpatient clinics as I feel that in the present state of our knowledge it is desirable to keep careful records and to have well controlled supervision, so that one knows what one is doing. It could happen that some general practitioner way out in the sticks may very well see a patient he knows and give him his methadone liquid everyday. A man might come in the morning before the doctor starts his general round of patients, be given his methadone, be sent home and everything may be fine. But I am talking about the probability that the doctor is more likely to say that he will see him next week, next month, or take the attitude that he is a fine fellow and will not abuse the stuff and so let him have it.

I am just really thinking in terms of the control under which things, in my opinion, preferably should be conducted. It is not an

absolute. I am really making a relative rather than absolute comment.

Mr. MacEwan: In regard to these facilities, for instance in the Montreal area, is it the provincial government that pays towards these facilities?

Dr. Naiman: At the moment in Montreal there are no facilities. The provincial government has set up this office to deal with alcoholism and drug addiction. They have obviously given first priority to alcohol and they have set up a number of centres specializing in the treatment of alcoholics. We have asked for some time to set up a centre for addicts and we have received the reply that there are no funds; this is for slightly over a year. I am not critical of the government. I think that alcoholism is undoubtedly a much more major problem in the Montreal area in Quebec than drug addiction and they are going to direct their funds first towards trying to do something about alcoholism. I think this can be a reasonable administrative decision from their standpoint in terms of the establishment of priorities.

Mr. McEwan: Do you consider drug addiction a national problem? I take it, not to the same extent as alcoholism, from what you have said?

Dr. Naiman: I am not altogether clear on what you mean by a national problem.

Mr. MacEwan: Is it of sufficient importance that not only provincial governments but the federal government should contribute towards facilities for the treatment of drug addiction?

Dr. Naiman: I think you are asking me to express something which is outside my competence. The Criminal Code, of course, is federal, which is why I am talking to you about it this morning. As far as the question of the relative roles of provincial and federal authorities in health matters is concerned, I think this is a thorny political matter which I would prefer to avoid.

Mr. MacEwan: I did not mean to get you involved in that. Thank you, Doctor.

Mr. Gilbert: Mr. Chairman, I would like to ask Dr. Naiman a few questions about marijuana. You said in your statement on page 5 that a study by Vaillant indicates that addicts remain physically healthy. One of the scares that many people, or more especially parents have today is the use of marijuana

by university students and so forth. From your studies, have you observed any physical effects in persons using marijuana?

Dr. Naiman: Personally I have not seen anybody using marijuana. In our experience at the hospital or in my private practice I just have not come across it so I am talking from what is in the literature rather than from experience. What is in the literature is the following: that as far as adverse effects on physical health are concerned, if there are any, I am not aware of them. There is the occasional acute psychotic episode. In non-medical terms the person temporarily goes crazy. He develops hallucinations, delusions and so on. Now, again to come back to the comparison, or what I use as a yardstick—alcohol—this happens with alcohol as well and has been known for a very long time—delirium tremens or alcoholic hallucinosis.

These reactions do occur with marijuana. People have reported for treatment and have been hospitalized in various centres because of the occurrence of this episode. As far as I know there is absolutely no information whatsoever as to the proportion of marijuana users who will develop these reactions, if, indeed, the use of marijuana is as widespread as we are led to believe it is. I am talking about what I read in the popular press and about the government's having arrested about 300 people across Canada last year for marijuana. If the use is really that widespread then the incidence of toxic reactions must be awfully low because there have been few reported. The significance of this depends on the total number who are using the stuff.

I have a paper here by Dr. Keeler. I think he studied 16 students in North Carolina. His estimate is that a considerable proportion of the student body is using it. But if they have a few thousand students and let us say half of them are using it, there would be about 1,000, conservatively. Now, if you have a rate of 15 per 1,000, this is not high. But it may be higher because some of these reactions. I think the only honest answer to this is that we really do not know.

Mr. Gilbert: Have you any suggestions with regard to preventive cure, or the education of young people not to use these drugs?

Dr. Naiman: I will answer that question, with your permission, in the negative way, by saying what it should not be, and perhaps then it will become clear what I think it should be.

• (12:20 p.m.)

It should not be an excessively scary type of propaganda. In other words, people will say, "This is terrible. If you do this then all kinds of dreadful things are sure to happen to you". If the individual sees that his friends are using the stuff and nothing really all that drastic happens to them then the statement is obviously a lie and I think it defeats itself. Public education in the matter should really be as factual as possible. In my opinion, there should be statistics, such as the number of pilots killing themselves and other people after having taken drugs—the sort of cold hard facts. We should collect the cold hard facts about marijuana or barbiturates, or, any drug. We live in a reasonably sophisticated age and students are intelligent people. If we give facts I think we are likely to influence them. If we indulge in scary propaganda I think it will backfire on us.

Mr. Gilbert: I have one further question Mr. Chairman, if you do not mind. I note in your paper you say that if people are charged with criminal offences and they are referred to your hospital for treatment if the treatment continues then probably the charge is not proceeded with. Now, would that be charge of possession of narcotics?

Dr. Naiman: Yes; they are faced with the charge of possession.

Mr. Gilbert: It should not be a charge, say of theft, or prostitution?

Dr. Naiman: No, no. We have not had experience of this, but there have been a few instances of charges of possession. You see when we take somebody for treatment what we do is give them a letter stating that Mr. so-and-so is under the care of the Jewish General Hospital for the treatment of drug addiction. The patient then waves this, you see, like a flag, and we have not interfered at all. I have never had any direct contact with the RCMP or the Crown Prosecutor, or anybody. The feedback that we get is that the patients have found it a very helpful thing.

Mr. Aiken: This proves that the police authorities generally are really more interested in seeing people take treatment than in putting them in prison?

Dr. Naiman: Yes. I have absolutely no quarrel with the police authorities. As matter of fact, there have even been instances where people under our care, let us say, have been

involved in a traffic accident and they have brought the person, who is on methadone to the hospital so that he could get his methadone. They have been extremely helpful. There has been no friction at all with any kind of legal authority.

Mr. Gilbert: This brings me to my next question, on the availability of the drug. Many of the addicts commit offences for the purpose of getting money to buy the drug.

Dr. Naiman: That is right.

Mr. Gilbert: There has been a recommendation that narcotic clinics be set up so that they could be given the drug. One of our previous witnesses said that the mere setting up of a clinic is not sufficient because, as you say, drug-addiction is a symptom of some other mental disease, so that you have to take it a stage further than just giving the person the drug; that you must give him other treatment.

I will just finish by saying that it seems to me that you have really to strike at the availability of this drug. At the moment we permit pushers to sell the drug, and they are doing it for the purpose of making money. It is a question of taking this profit motive out of drugs. Then you will have, to me, a reduction in the criminal activities of these addicts.

Dr. Naiman: Yes. The statistics on the criminal activities of addicts are very impractical, if you have studied the question. The criminal activities of the addict are, to a great extent, intents and purposes, really related to their need to procure money. I would imagine that if the price of whisky went up to \$100 a bottle there would be a great deal of crime committed for the purpose of getting the \$100 necessary to buy a bottle of whisky. That is really a link between crime and narcotic addiction.

Mr. Gilbert: Thank you very much.

Mr. Wahn: Mr. Chairman, I came in a little late. If my questions duplicate those already asked, please stop me.

In the brief prepared by Dr. Naiman there is a statement that drug addiction is a symptom of psychiatric illness, and also that it very often disappears spontaneously after a period of a decade or so. Is there, or is there not, any inconsistency in those two statements?

Mr. Naiman: They are quite consistent, because there are illnesses which we know tend to run a natural course and to get better with advancing age. Even an illness such as schizophrenia will often tend to get better with advancing age. I do not think there is any inconsistency there.

Mr. Wahn: And many of the mental illnesses which cause the drug-addiction, or bring on the drug-addiction, themselves disappear spontaneously after age 42 in a large number of cases.

Mr. Naiman: One of the problems—and my medical colleague here can perhaps support me in this—in trying to put the point across is that in psychiatric illness we are not dealing with a situation in which a person is either sick or well. You know, you either have measles or you have not, and there is nothing in between. Here there is really a spectrum. If one takes a sample of the population at large and rates them according to the degree of mental disorder, there will be very few who will have none. It is like a continuous line. It is almost like the intelligence curve. Consequently, the person after age 42 is, let us say, on an all-or-none basis, different from what he was before, in that he does not use the drug any more. In order to maintain this—this is an observation, anyway—the theory does not have to be that he has become a radically different person. He needs only to have changed a little bit—just enough—so that he can manage without the drug.

Let us take, as an objective thing, the psychological test called the MMPI. They have been giving it at the Mayo Clinic to all patients whatever they come in for—gall-bladder and everything. Therefore they have an enormous mass of data. As I said before, you have a continuum. If the patient moves a bit along that continuum, that may be good enough for him to stop taking the drug. So it does not imply that there is a specific illness and then at age 42 for some miraculous reason the specific illness disappears. He just became a somewhat different person after age 42, but the somewhat becomes a matter of degree, or a matter of kind, when it is a question of, say, consuming the drug.

Mr. Wahn: Thank you, doctor. My second point is that the brief seems to suggest that the medical effects of addiction may be no worse than, or, may not be as serious as, taking alcohol. Does this depend upon the type of drug? For example, a newspaper

report recently indicated that a drug such as LSD or two-line, which is in a glue sometimes used, do have very serious medical effects upon the individual.

Dr. Naiman: Yes. That statement is based on a study which was a follow-up of people who were in Lexington 12 years ago. The study was published a year ago. This refers only to morphine and its derivatives. In those days, the number of people using LSD was negligible. LSD was only discovered, I think, in the late 1940's and at that time it was a psychiatric curiosity. It was used at first in the treatment of certain illnesses. When I was an intern in The Allan, Dr. Cameron, who was then the professor of psychiatry, thought it had some promise. It did not, so to speak, begin to run wild until very recently. LSD causes all kinds of damage to the individual. There is damage to the reproductive system, and to the chromosomes. This is so. The information here with respect to the addict remaining physically healthy in spite of many years of addiction essentially refers to the heroin user.

Mr. Wahn: This represents the traditional drugs and with the development of new drugs by synthesis that statement, then, would require a great deal of careful consideration.

● (12:30 p.m.)

Dr. Naiman: Oh, yes.

Mr. Wahn: The effect might be very much more serious than the effect of alcohol.

Dr. Naiman: LSD might very well, although we know, of course, that the effects of alcohol on both the liver and the brain can be quite serious. Actually, the standard method for calculating the number of alcoholics in a community is to take the number of people who die of cirrhosis of the liver per year from the statistics of the vital bureau statistics, or whatever body publishes that information, and then multiply by a certain factor and that tells you how many alcoholics there are.

Mr. Wahn: The consumption of alcoholic beverages might decline greatly if this particular hearing is well publicized. I think the brief also indicates that perhaps it would be desirable to delete the provision of the Criminal Code which makes it a crime to possess narcotics. It is no longer a crime to possess alcohol so long as the bottle is sealed proper-

ly in transportation. Is it possible if the stigma of crime were removed from the possession and, therefore, the use of narcotics that their use might become almost as widespread as the use of alcohol now that its use has been legalized?

Dr. Naiman: Yes. This is a question I expected and I searched for the answer. I Kolb in his book gives the figure of the greatest number of narcotic addicts that ever existed in the United States prior to the introduction of any kind of legislation regulating narcotics which was the Harrison Narcotic Act, I think, around 1915 or something like that. He went back to the time when there was no legislation at all—I am sorry; I do not recall what the total population of the United States was at that time—and the estimated total number of addicts at that time was about 250,000.

In the early 1960's it was down to 60,000 when it was completely unregulated in any way, shape or form—which, incidentally, not what I am suggesting—the number would be four times as great as it is now. One assumed the population to have been the same. Perhaps one of you gentlemen knows what the population of the United States was in 1900. Let us assume it was 100 million; one would have to add another factor of two that would increase the number eight fold.

By fairly strict criteria, using this business of people who die of cirrhosis of the liver the number of alcoholics in the United States in the year which Dr. Kolb took for his figures was about five million at a time when there were 60,000 narcotic addicts, so the ratio in terms of the far more prevalent use of alcohol is overwhelming. As I said before I am not advocating selling heroin in bars but even if it were done the likelihood is that the ratio would still be similar.

I do not know how many of you have ever had morphine. I had it when I had my appendix taken out. I had an injection and they kept it up for a day or two and really for any half-way normal person, it is awfully ghastly stuff. It keeps your mind in a kind of haze and blur and just on a purely subjective basis I think you have to be awfully disturbed to want to be in that state. I did not have the slightest desire to stay on the stuff.

Mr. Wahn: Then you do not think there would be any social danger in removing the criminal stigma from the possession of narcotics?

Dr. Naiman: No, I do not think so.

Mr. Howe: Unless possibly it is for sale. Any person possessing it for sale alone—surely we cannot agree with that.

Dr. Naiman: No; that is trafficking. I go back to what I quoted previously. I certainly think trafficking should be prohibited. As a matter of fact if in terms of legal procedure it is easier to obtain a conviction for possession than to prove that the possession was for the intent of selling, I suppose it is up to the legal people to figure out a way of wording it in such a way.

My point is that the addict who has a certain amount of drug in his possession for his own personal use should not be considered for that reason a criminal. The person who makes a business of trafficking in drugs and maintains warehouses for that purpose and so on, definitely should be considered a criminal and I am in no way suggesting legalized distribution of heroin.

Mr. Pugh: Would your recommendation be changed as a result of the fact that now we are developing new types of drugs, and more dangerous drugs medically, such as LSD?

Dr. Naiman: Even with the use of a dangerous drug—and I come back, really, to the procedure, let us say, of civil commitment—it seems to me more appropriate than your labeling somebody as a criminal if he uses a drug which is going to be dangerous to himself primarily. I think there has been one murder reported with the use of LSD. Well, you know, this is very questionable because so many people are using LSD. Even if LSD has implicated in one murder, this is neither here nor there, I think.

Really these people primarily are harming themselves. This is why the figure that I gave for alcohol was really in terms of injury to others. It seems to me that the role of the law primarily is to protect us against what others are going to do to us. If an individual wants to use a substance which is harmful to himself, well perhaps forcible treatment has place but I do not think the place is the Criminal Code.

Mr. Cameron (High Park): Dr. Naiman, I just wanted to ask one or two questions following along what Mr. Gilbert said and your remarks about warning young people particularly about the use of marijuana, not taking a scare approach to the problem. Is not the other side of the coin their moral health, not their physical health? Apparently it does not harm their physical health too much, but

their moral health is involved. They are apt to do things because they take a particular drug, heroin in particular. They do things that otherwise they would not even think of doing.

Dr. Naiman: Which kind did you mention, sir?

Mr. Cameron (High Park): Well, I mentioned marijuana. I do not know what influence it might have on their moral character but, for example, it produces a tendency to do things which normally they would not do. But with heroin it is perfectly clear that the craving for the drug leads a person to do things which normally he would not do in the field of minor crimes, and so on.

Is not another approach to the problem to try to educate people, particularly young people nowadays, to the harmful effects that this may have on them?

Dr. Naiman: You have mentioned two issues which I think are very different. Marijuana does have a certain disinhibiting effect in the sense that if somebody takes marijuana, he is more likely to make a pass at the girl next door than he otherwise would. It has a certain releasing effect. Heroin is the opposite. Heroin addicts, if you think of sex as an example, are much less interested in sex. And those crimes that they commit—I just want to reiterate this again because I think this is one of the great misconceptions about the narcotics user—are not committed by the narcotics user while he is under the influence of the drug. When he is under the influence of the drug he is more likely to be as in a picture; he is lying flat on his back; he cannot commit a crime. The crime is committed—and usually it is a very minor crime as opposed to a major crime—for the purpose of obtaining the money that they need to obtain the drug. The morphine or the heroin-addict is not really disinhibited. It does not relax his moral standards. It may be that in one or two cases it does, to a certain extent; I think this is correct.

Now, in terms of obtaining factual evidence about the comparison between the relaxation of moral standards, which is the result of the use of marijuana, and that which is the result of alcohol, I think one would have a pretty difficult time. Certainly at the moment there are no comparative figures to indicate how many girls have succumbed while under the influence of alcohol as compared to under the influence of

marijuana. In the case of other crimes committed under the influence of marijuana, I do not think there is any particular evidence of a high co-relation.

Mr. Cameron (High Park): Let us assume that we establish one of these clinics that you are advocating and people are coming to it voluntarily or are referred to it by the police courts who say that if they go to this particular clinic and take the treatment they will do something about their case. Using only methadone which is the one treatment which has been specifically mentioned, what proportion of cures do you feel would follow? If this is something that you could hold out to the public as a new hope for an addict, and if he will take this particular type of treatment on a voluntary basis—I am not talking about the involuntary—what are the prospects that he will be able to overcome the habit?

Dr. Naiman: The preliminary percentage of Dole and Nyswander, in terms of not going back to heroin, is 85 per cent.

As I said in answer to a previous question, I think we will have to wait 5 to 10 years to see how this holds up in time. Dole and Nyswander, in addition to giving methadone, are very enthusiastic. This, I think, always helps when you start with a new treatment. They are social workers and they have a very large staff; they have the resources of the Rockefeller Institute, which is now called the Rockefeller University, behind them; and they do a great deal more for these people than just dishing out the methadone. They have an integrated and really quite sophisticated program. They report 85 per cent cure, in the sense that the person does not go back to heroin. One will just have to wait to know how successful this is going to be in the long run. When one is dealing with something that is as recent as that there is no substitute for time.

Mr. Cameron (High Park): Dr. Fraser, who was before us on Tuesday, did not seem to think that the percentage was nearly as high as that.

Dr. Naiman: I think this is part of the issue. The results may be different in Toronto. It may be that 5 or 10 years from now this particular approach will be discarded. All one can say from these early experiments is that it holds promise. In medicine there have been many forms of treatment in the

past which have held out great promise and which in time have been discarded. I am not trying to sell this as the answer to the problem, or that the problem has been solved by any means.

Mr. Cameron (High Park): It is still under study.

Dr. Naiman: It is under study. That is all one can say at the moment. If the study in Toronto contradicts them and if a few other studies in other centres contradict them, then the treatment will have to be discarded.

There is a man in Baylor University which is in Texas, who gets up to 45 per cent cure without methadone, just by seeing the people in the office.

Mr. Cameron (High Park): I have one last question. In your practice, have you had any experience of treating people with methadone?

Dr. Naiman: Not in my private practice. I have not wanted to become involved in this. However, in the hospital we have treated a few people with methadone. I think the number that we have treated is about 5 or 6, which is really too small a number to warrant making any statement. We also did not have, for lack of funds, the kind of laboratory facilities which would have enabled us to check on whether or not these people might also be taking heroin.

What we have observed—and I think perhaps in itself it is a remarkable feat, considering what has been said about addicts in general—is that they will come to the hospital every day; so that in terms of being assured that you have the body there and that therefore at least a doctor or a nurse is going to see them, I think I can support what Dole and Nyswander said. They will come. They are not going to disappear.

Mr. Cameron (High Park): There is probably a natural reluctance.

Dr. Naiman: Beyond that I do not think that we have had enough experience to make any really any comment one way or the other.

Mr. Cameron (High Park): Thank you very much.

Mr. Pugh: Does a person taking methadone experience the same feeling and have the same effects as he would if he were taking drugs? You say they voluntarily come back to the hospital for this treatment. Do methadone induce anything into their minds?

Dr. Naiman: Well it is difficult to know exactly what it induces because drug addicts are a very sophisticated group of patients. They know that methadone is a narcotic and they know that they are getting it. Now it does not give them the kind of lift that heroin gives—this is the major difference between the two drugs—but they seem to be quite contented to take it, and they do in fact like it. Exactly why they should take a drug beyond what is to them the satisfaction of knowing that they are taking a narcotic which really produces, as far as one is able to tell, no visible attack, is somewhat unclear, we do not know.

Mr. Pugh: Could it be the money factor?

Dr. Naiman: That is perfectly true but, on the other hand, they do not get the "lift" from it that they used to get from heroin.

Mr. Pugh: I would imagine that it is very well known among addicts...

Dr. Naiman: Oh yes, they know about it.

Mr. Pugh: ... that if you go on treatment is not going to cost you anything.

Dr. Naiman: Oh, yes, certainly.

Mr. Pugh: There is a hope of a cure but this also gives you the same effect, and this is what I am getting at.

Dr. Naiman: It does not give you quite the effect because it does not produce that elevation of mood, but presumably it must do something because, taking Dole and Nyswander's figures, they get 85 per cent of people coming back. The man in Texas tries to do it without the drug and he is down to 45 per cent. Therefore the drug must do something but exactly what it does I cannot say.

Mr. Pugh: It must reduce the craving.

Dr. Naiman: Oh, yes, in some way, of course it does and although it does not give them the satisfaction that the drug did in some ways it seems to reduce the craving.

Mr. Pugh: Maybe it could be used as a substitute for alcohol.

The Vice-Chairman: I believe Dr. Howe has a further question.

Mr. Howe (Hamilton South): In general terms would you say that society originally condemned people who were addicts because they considered them as having shall we say

a self-inflicted condition which was punishable instead of treatable and consequently our so-called penal institutes did not provide any treatment? In other words, the institutes did not provide psychiatrists, psychologists and so on to treat these individuals and this is why it took on the present connotation.

Dr. Naiman: You are asking me really an historical question and I am afraid I have to just plead ignorance. I really do not know why society considers this to be a crime. The obvious reason for making this drastic distinction between alcohol and narcotics is of course a question of prevalence of use because the overwhelming majority of the population does use alcohol. When they tried prohibition in the States of course it did not work very well, but I think it has been accepted notwithstanding the disadvantages that it has.

Mr. Howe (Hamilton South): In other words, these people were actually being punished because they inflicted this condition on themselves?

Dr. Naiman: Yes.

Mr. Howe (Hamilton South): Such as venereal disease and so on. They all have this connotation.

What would be the criterion for cure through this new type of institute that you suggest before you can return these people to society again, if you are going to institutionalize them?

● (12:50 a.m.)

Dr. Naiman: This is a very difficult question to answer. I really think it is going to have to be a question of trial and error. The evidence seems to be—and I am going back to Vaillant's figures on Lexington—a bit of hard data. This is 12 years later. This is not, "I have found something wonderful", the way Dole and Nyswander did with lots of press coverage, and so on, and advertise it all over the place. This was carefully done and thought out. If you keep people in the length of time that Vaillant has mentioned, which is, let us say, 9 or 10 months, and then give them a year of supervision outside, you get a very high percentage of recovery. I think one could use this as a kind of yardstick on which to fall back. My own inclination would be to try to see, with the development of these new outpatient facilities, what happens if you release people who go to clinics sooner

and really use rehospitalization. I know that some of my psychiatric colleagues will disagree with me on that because the worst thing a mental hospital psychiatrist likes to think of is that a mental hospital is a threat. However, I have used it as a threat with outpatients and it works. I am not talking about drug addicts, I am talking about any kind of psychiatric patient. If a man is very sick and he does not come back for treatment and he does not take his medication, I will take the position, "Considering how sick you are, if you do not continue with treatment you will end up in a mental hospital". As I say, I will be jumped on for this as soon as I return to Montreal.

Mr. Aiken: I do not agree with threatening a person with any illness that he has to go to a hospital.

Dr. Naiman: I really think it works. I think if we can keep the hospital, the closed institution, in the background we may in fact be able to have not too many people in the institution. There will be some, yes, but probably one can at least try outpatient treatment and see what happens. If it fails, then one hospitalizes.

Mr. Howe (Hamilton South): You do not actually come up with a true criterion because you have no way, except by trial and error, of determining the percentage. This is making the natural assumption that everybody is different and therefore someone is going to perhaps be cured in three months and someone else may not be cured in five years. You have no way of predetermining this before you release them except by the time factor that you have suggested.

Dr. Naiman: It is a bit more tricky than that because with schizophrenia, let us say, one can tell that at a certain point the patient no longer has delusions, hallucinations, and so on, and therefore, he is ready for discharge from the mental hospital.

Of course, a drug addict is not taking heroin while he is in the hospital. One hopes the mental hospital is run sufficiently well that heroin does not come in by some other means.

Mr. Howe (Hamilton South): Like alcohol does in some of the other hospitals.

Dr. Naiman: That might also happen but let us assume it does not. Of course, while you have them in hospital you have a 100

per cent cure because they cannot get heroin in a mental hospital.

The question as to when he is well enough that if you discharge him he is not going to relapse and go back to the drug I think of necessity is going to be done by guess and by God. I am sure that of necessity there will be a great many errors made because there are no reliable criteria.

Mr. Howe (Hamilton South): You do not have a 100 per cent cure in hospital. You have a 100 per cent abstinence.

Dr. Naiman: That is right. If one follows these people up in clinics, those who relapse can be rehospitalized. My inclination would certainly be that one relapse—let us say he takes heroin once or even twice—does not mean that we immediately rush him back into the hospital. I think this would be a very unrealistic approach. Incidentally, there are laboratory methods now which are very reliable. You can obtain a sample of urine from an individual and you will know exactly whether he has been taking heroin, barbiturates, dexedrine, and so on, and one does not have to rely—this is perhaps a point worth making for the record—on the individual's word. We had to do this with our pilot project because we did not have the money for the lab facilities, although these lab facilities are not all that expensive. It is now possible by simply asking the addict to produce a sample of urine, usually in the presence of an attendant because otherwise he could bring the urine of somebody from across the street, to tell whether or not he has been taking drugs. They do that.

Mr. Howe (Hamilton South): This is true even in the first examination.

Dr. Naiman: That is right. One would know exactly and you do not have to take the addict's word for anything in this area.

Mr. Howe (Hamilton South): Anyone who has a recurrence of this addiction is usually a liar along with it, is he not?

Dr. Naiman: Yes. If he knows he is going to go back into the hospital, or there is a threat of this, he is likely to lie. But at the same time, you see, this again can work in a preventive way. If an individual knows that his urine is going to be checked and if he takes the stuff he is going to be detected, that will act as a deterrent. He realizes his doctor is going to know that this has happened.

The Vice-Chairman: If there are no further questions, in the name of all the members of the Committee I wish to thank our distinguished guest for appearing before this Justice Committee this morning. You have been a most competent and informative witness, doctor. Your presentation and the perti-

nent and detailed answers you gave I believe will be very useful to this Committee in its study of this important Bill which is before us. We are very grateful to you, doctor.

This Committee stands adjourned until November 28, when we will hear Miss McNeill.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

This edition contains the English deliberations and/or a translation into English of the French.

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS
Second Session—Twenty-seventh Parliament
1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 12

TUESDAY, NOVEMBER 28, 1967
THURSDAY, NOVEMBER 30, 1967

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

WITNESSES:

Miss Isabel J. Macneill, Clinical Research Associate, Alcoholism and Drug Addiction Research Foundation, Toronto; and Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University, Montreal.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (<i>Hamilton</i>	Mr. Pugh,
Mr. Cantin,	<i>South</i>),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	Mr. Mandziuk,	Mr. Wahn,
Mr. Graftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

CORRIGENDUM

Issue No. 11—THURSDAY, November 23, 1967

The name of the witness appearing before the Committee on Tuesday, November 28, 1967 is Isabel Macneill, rather than the way it appears in Issue No. 11 of the Minutes of Proceedings and Evidence.

ORDER OF REFERENCE

HOUSE OF COMMONS,

WEDNESDAY, November 29, 1967.

Ordered,—That the name of Mr. Ryan be substituted for that of Mr. Brown on the Standing Committee on Justice and Legal Affairs.

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

TUESDAY, November 28, 1967.

(12)

The Standing Committee on Justice and Legal Affairs, having been duly called to meet at 11.00 a.m. this day, the following members were present: Messrs. Cameron (*High Park*), Forest, Honey, Howe (*Hamilton South*), Stafford and Whelan—(6).

In attendance: Miss Isabel J. Macneill, Clinical Research Associate, Alcoholism and Drug Addiction Research Foundation, Toronto, Ontario.

There being no quorum, the members present agreed to hear the witness and to ask for a motion at the next meeting to have today's proceedings incorporated as part of that meeting.

The Chairman introduced the witness, Miss Isabel Macneill, of the Alcoholism and Drug Addiction Research Foundation in Toronto. Miss Macneill read a prepared statement concerning the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*). Following this, the witness was questioned by the members present.

At the completion of the questioning, the Chairman thanked Miss Macneill for her appearance before the Committee.

At 12.20 p.m., the proceedings adjourned, until Thursday, November 30, 1967 at 11.00 a.m., when the witness will be Dr. B. Cormier of McGill University in Montreal.

THURSDAY, November 30, 1967.

(13)

The Standing Committee on Justice and Legal Affairs met at 11:10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Forest, Gilbert, Guay, MacEwan, Otto, Ryan, Stafford, Whelan and Woolliams—(11).

In attendance: Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University, Director of Forensic Psychiatry, McGill University and Psychiatrist-in-Charge, St. Vincent de Paul Penitentiary, Cité de Laval, Quebec.

The Chairman introduced the witness, Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University. Dr. Cormier addressed the Committee, stating his views as a clinician and teacher, in relation to the subject-matter of Bill C-96, (*An Act respecting observation and treatment of drug addicts*).

On a motion by Mr. Otto, seconded by Mr. Gilbert,

Resolved,—That the proceedings of Tuesday, November 28, 1967, be incorporated into today's Minutes of Proceedings and Evidence.

For the balance of the meeting, members of the Committee questioned Dr. Cormier on the problem of addiction and its relationship to the subject-matter of Bill C-96.

Mr. Stafford moved, seconded by Mr. Whelan,

That proceedings against any person charged under the Narcotics Control Act who uses narcotics, who is certified by competent medical authority as taking treatment and responding thereto be stayed by the Crown until this Committee makes its report.

It was agreed to refer Mr. Stafford's proposal to the Subcommittee on Agenda and Procedure for consideration, and its recommendation back to the main Committee.

Mr. Stafford suggested that Mr. D. Craigen of the Matsqui Institution in British Columbia, be invited to appear as a witness in connection with the subject-matter of Bill C-96. The Clerk was instructed to get in touch with Mr. Craigen and report to the Subcommittee.

The Committee adjourned at 1:10 p.m., to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, November 28, 1967.

(11:20 a.m.)

The Chairman: I am going to call the meeting to order. We are considering the subject matter of Bill C-96, an Act respecting observation and treatment of drug addicts, and at this stage I would like to introduce Miss Isabel Macneill, who is a clinical research associate with the Alcoholism and Drug Addiction Research Foundation in Toronto. I understand that Miss Macneill will give some of her background for the information of the Committee. Therefore, Miss Macneill, I will call upon you. We do not ask our witnesses to stand; you may remain seated; just make yourself comfortable and proceed.

Mr. Howe (Hamilton South): Mr. Chairman, is there no brief or submission for us?

The Chairman: Yes, there is a brief that Miss Macneill mailed to the secretary. Unfortunately, I presume due to the heavy Christmas mail, it has not been received yet. Miss Macneill has a brief and in due course it will be photostated and copies given to all the members of the Committee for study.

Mr. Howe (Hamilton South): Well, it is hardly fair to try to question today.

The Chairman: I realize that, Dr. Howe, but that is the situation we are in, and at this moment I certainly cannot do anything about it.

Mr. Howe (Hamilton South): No, that is fine. I am sorry.

The Chairman: Miss Macneill.

Miss Isabel Macneill (Clinical Research Associate, Alcoholism & Drug Addiction Research Foundation): Thank you, Mr. Chairman. In 1948, I was appointed Superintendent of the Ontario Training School for Girls at Galt. The purpose of this school was the re-education of juvenile delinquent girls, and this was my first contact with people in conflict with the law. Now, subsequently, in

1959 I went to England. In England, I became very much interested in the so-called British system of treatment of the narcotic addict.

I then returned to Canada and became Superintendent of the Prison for Women in Kingston from December 1960 until March 1966. During this period 70 per cent to 45 per cent of the inmates were convicted for possession of narcotics.

At present I am employed by the Addiction Research Foundation in Ontario to undertake a study of narcotics abuse in Metropolitan Toronto. This study involves the relationship between narcotics, the abuser and the environment.

Illegal possession of narcotics is a criminal offence. Most government money and effort are directed toward the apprehension and conviction of narcotic traffickers and abusers.

Narcotics-abuse as a medical-social phenomenon has never been scientifically explored and until it is no conclusions about treatment are possible. It is difficult for me to accept that imprisonment is a rational solution. Imprisonment removes some abusers who engage in criminal acts to acquire drugs for some periods of their lives. A study of the convictions of narcotics abusers will reveal that very few are cured by imprisonment. The narcotics abusers I know do not appear to be restricted to any social class, or type of personality. They have learned by contact with narcotics that the drug makes them more comfortable in their particular milieu. If they become involved in the street society, it, as well as the drug, supports their feelings of inadequacy.

In prison the abuser has no feelings of inadequacy. He has no responsibility for making important decisions. Work, food, clothing and recreation are provided for him. Prison insulates him from the stresses which make life outside difficult. Society is perplexed because so many narcotic abusers revert after months or years in prison, even prisons such as Lexington and Corona where treatment is stressed.

My impression of narcotic drug abuse is that it is uncontrolled and undesirable self-therapy. Narcotics seem to enable the individual to live comfortably as long as he can have drugs, or be the private responsibility, as in imprisonment. Our problem is to enable him to live comfortably in society, earning his living, participating in normal activities and feeling adequate.

Controlled medication may be the answer for some. Methadone maintenance experiments in the U.S.A., and to a lesser degree in Canada, have enabled some abusers to work, or at least to refrain from criminal activity. In-patient hospital treatment for withdrawal, followed by individual and group therapy and social and vocational rehabilitation, might ultimately bring other abusers to abstinence.

Ex-addict-directed programs, such as Synanon, have received great publicity as an almost instant cure for those who remain in the program. This program has been criticized because very few return to society. However, a drug-free community is obviously more desirable than a drug-abusing community.

All treatment programs for narcotics-abusers in Canada operate under disadvantageous conditions. By seeking help the individual admits he is a law-breaker, subject to imprisonment. Most abusers trust few people. Many believe that there is a link between clinics, social agencies and the law. Sometimes patients are progressing slowly towards cure. They have moved from the corner society, have enrolled in courses, or secured employment. As with alcoholics, the occasional reversion to abuse is probable. However, with the narcotic-abuser, possession means arrest and usually imprisonment. Therefore, the progress made towards re-establishment is lost.

The ultimate answer to drug-abuse probably rests in social attitudes. If society agrees that drug-abuse is a medical-social problem, with medical-social solutions, legal consequences for abuse will have to be rejected. Any alternative to legal sanctions will be expensive initially. Many approaches must be tried with clinical research to determine which approach is effective for whom. Where treatment facilities exist, and could be expanded, a more generous use of probation for narcotics-abusers might be a first step towards a more rational approach. Co-operation between the police, probation officers and clinical staff would be essential.

The Chairman: Dr. Howe, followed by Mr. Honey.

Mr. Howe (Hamilton South): Mr. Chairman, I have just a few questions for our witness.

You have said—and this is to repeat what last week's witness said, and to emphasize—that addiction in itself is not a crime; that it should not be treated as a criminal offence with consequent incarceration in jail, but rather should be treated in a medical way. Is this how you feel about it?

Miss Macneill: That is how I feel about it.

Mr. Howe (Hamilton South): You say that one of the essential criteria for addiction is the sense of inadequacy, or the lack of sense of responsibility. Do you conceive of any social way of preventing this, since the cause is usually a single thing? Is there any way of preventing addiction?

Miss Macneill: First of all, I wish to re-emphasize that I know probably 400 drug abusers, and they are different in as many ways as any 400 people that you would meet walking down a city block.

Mr. Howe (Hamilton South): But they do have this common bond?

Miss Macneill: However, there is, in my experience, some problem in growing up. I have never met a drug-abuser whom I felt had a happy, emotionally-secure childhood. The life histories of most drug abusers whom I know show that they are from broken homes. Therefore, to answer to your question, I think it is obvious that we will be able to prevent the abuse of drugs by more concern about the child during the school years—about the child's developmental pattern.

• (11:30 a.m.)

Mr. Howe (Hamilton South): Do you think hospitals in Ontario such as Thistletown Hospital for the emotionally disturbed children are now possibly playing a role in preventing some of this...

Miss Macneill: I think so.

Mr. Howe (Hamilton South): And could be used on a wider scale?

Miss Macneill: A much wider scale.

Mr. Honey: Mr. Chairman, I wonder if I could ask Miss Macneill to take a minute or

two and tell me—and I hope I could be helpful to the committee—the extent and the objectives of her research project; if she could just go into that a little.

Miss Macneill: The objective is to obtain an accurate picture of narcotic drug abuse in Metropolitan Toronto. I am trying to make contact with as many hard drug abusers as possible, to talk to them, to find out their ideas about the drug abuse situation, and out of this I will write a report to the Foundation. What they will do with it, of course, is their concern.

Mr. Honey: As you have indicated to Dr. Howe, you are concerning yourself with the background and the environmental conditions...

Miss Macneill: Yes, the present life style.

Mr. Honey: ... of the drug addict. As a next step, are you going into the area of cure and rehabilitation?

Miss Macneill: I am not a trained person in the medical field. I think my observations will be of interest to the staff of the Foundation for planning the treatment program.

Mr. Honey: Have you spent time in the Yorkville area of Toronto?

Miss Macneill: Not so much in the Yorkville area; I concentrate on the downtown area. The heroin abusers tend to stay around the Dundas and Jarvis parts of town, but there has been a great change in Toronto. In 1965 when I spent some time on the corners, there was a very large congregation of narcotic addicts in various restaurants. Now this is changing. There is very little heroin in Toronto at this point, and what I am seeing is substitute drugs—the barbiturates. Heroin addicts who cannot afford the price and reject the quality are turning to barbiturates, to a drug called alvodine, and there is some slight evidence of experimentation with LSD.

Mr. Howe (Hamilton South): These, then, are not narcotics, if you will excuse me.

Miss Macneill: Alvodine is a narcotic.

Mr. Howe (Hamilton South): Alvodine, but not the others. They are barbiturates.

Miss Macneill: Barbiturates. The effect of barbiturates abuse by these heroin users is very upsetting, because they take so much for granted; they become quite incompetent,

and usually are admitted to hospital on an emergency basis, or to jail overnight.

Mr. Honey: These are hard to appraise. Would it be fair to describe them as hard-core addicts, who have been addicted over a number of years?

Miss Macneill: They are young addicts.

Mr. Honey: They are young addicts. These are the people in the Dundas-Jarvis area. How do you describe a young addict?

Miss Macneill: Under thirty. I am meeting very few people in Toronto under the age of twenty-one who are using narcotics. Of course I am not finding everybody; I just started this project and may run into more. But this is one of the encouraging things; that there are very few young people becoming involved.

Mr. Honey: In your present study or your studies in the past, have you had an opportunity to observe the arraignment of these people in court on offences of theft, or shoplifting, or something where it is probably apparent that the person is a drug addict? Have you had a chance to observe the handling of these people in the magistrates' courts in Toronto?

Miss Macneill: Yes, in most of the cases I see in court, the women are charged with vagrancy(c), soliciting, the men with theft-under.

Mr. Honey: And is there any differentiation in the treatment, or in the processing of these people through the magistrate or courts as opposed to a woman charged under the section you mentioned who is not a drug addict?

Miss Macneill: No, I do not think the drug abuse really is involved very often in a vag. (c) charge. When a person is charged with vag. (c) there is no reference to her state as a drug addict.

Mr. Honey: Would it be apparent to an observer that that woman is a drug addict?

Miss Macneill: No, not unless she was sick.

Mr. Honey: I see.

Mr. Howe (Hamilton South): Could I interrupt and ask a question for explanation. What is vag.(c)?

Miss Macneill: Soliciting. Wandering...

Mr. Howe (Hamilton South): I understand. And you used another one—"theft-under".

Miss Macneill: Under fifty dollars.

Mr. Honey: Then, Miss Macneill, I just want to come a little closer to the Bill we have under study and, if you would like to comment, ask you two questions: first, whether, as a result of your observations and studies over the years, you think that legislation along the lines of Bill C-96 would be helpful to the drug addict and to society generally; and secondly, whether you feel that there is at present a need for this sort of legislation in the courts as you have observed them?

Miss Macneill: Ultimately, I would hope that all legal sanctions could be removed from the drug abuse problem. We must recognize that, because of the legislation over the past 30 or 40 years, we have a very large number of people who, although possibly delinquent initially as juveniles, because of the necessity to acquire money, became quite involved in criminal activities.

Now, at the present time, in looking at this Bill, there are one or two points that concern me, and the first is that in clause 2 (c), I am concerned that a judge or magistrate looking at the record of a drug abuser and seeing four or five convictions would quite naturally be tempted to say: "This man is not suitable for treatment." And yet in my experience—and I believe Dr. Fraser made this point—some of the older addicts are more amenable to treatment. In fact, there appears to be some reason to believe that after 15 to 17 years' drug abuse, a person drops out of the drug abusers' society, so that that point rather concerns me—this idea that it shall be "within the discretion".

• (11:40 a.m.)

Mr. Honey: Is it a discernible trend? Have you been able to establish by research that after 15 or 17 years there is a significant number who drop out?

Miss Macneill: I have not been able to establish it by research but there has been research done.

Mr. Honey: There has. Well then, referring to subclause (c) of clause 2 which you mentioned, Miss Macneill, I gather—and probably it is inherent in this clause—that you would like the magistrate or judge to have available medical or a social worker's evidence before he exercises discretion as to the

possibility of recommending rehabilitation rather than look at the cold facts of the man's record and then make a decision. Is that what you are saying?

Miss Macneill: It would be very difficult, for presumably you would get drug abusers before the magistrate who had never had any contact with a clinic. After all, there are very few clinics in Canada. Vancouver and Toronto are the big ones.

All right, you could have a predetermination report. I would not call it presentence because we are eliminating the idea of sentences. What would a social worker or a doctor be able to say about the possibility of one man being curable and another one not? I think there is this dichotomy here between law and punishment and it is very difficult to resolve. We are saying on one side that this drug addict is a sick person and yet we are going to prescribe legal sanction for sickness.

Mr. Honey: Would you not agree that the intervention and the assistance of medical and social evidence would be helpful in these circumstances?

Miss Macneill: It would be helpful, of course.

Mr. Honey: It probably would be something that we would feel—or would you agree should be available to the magistrate or judge in these drug addiction cases?

Miss Macneill: Yes, definitely.

Mr. Honey: There is only one other question, Mr. Chairman. In your opening statement, Miss Macneill, I detected, and may be I was wrong, that you were perhaps a bit pessimistic, from your research and observations to date, about the over-all picture of the cure and rehabilitation of drug addicts. Is that a fair assumption?

Miss Macneill: I do not think anyone to date has any reason to be optimistic. I know 100 cured narcotic addicts and in most cases they have been cured by a very good relationship with one person—marriage, a child, a job, some comfort greater than addiction. I think my concern is that if we are going to say cure is total abstinence, then there is reason to be pessimistic. But if we are going to accept that there are some people who have used drugs for so long that total abstinence is an unrealistic goal, and maintain them on methadone or any drug that might be discovered in the future, I would be quite optimistic about the picture. I believe total

abstinence is desirable but realistically it is not easy to attain.

Mr. Howe (Hamilton South): How then would you define a cure for the sake of the record as far as cure is concerned?

Miss Macneill: As far as I am concerned, the chronic drug abuser who is living in society working and refraining from committing offences is a cure.

Mr. Stafford: Miss Macneill, I had to go out and use the telephone for a minute and I missed the first part of your report but when I arrived you were saying that possession means arrest and sometimes imprisonment. You do agree, do you not, that the Crown first of all must prove a case beyond any reasonable doubt and that arrest is almost always a necessity?

Miss Macneill: Yes. I was suggesting, Mr. Stafford, at that time, that the process of treatment was rather difficult for an agency like the Addiction Research Foundation because narcotic drug abusers tend to slip and when they do, if they are suspected of possession of heroin and arrested, very often they are returned to prison, which means that the progress that they have made toward cure is lost. I think that we could use a parallel if we had the same attitude toward alcoholics.

Mr. Stafford: Are you quite right, though, when you "if they are suspected"? The Crown must always prove its case beyond any reasonable doubt.

Miss Macneill: Oh yes, but I am not suggesting that they do not have heroin. This is what I mean by the slip; that they have possibly acquired a position, they have moved away from the corner, but they will revert. They will, under stress, perhaps on a week end, go down, meet an old friend, and they will secure heroin. If they are arrested by the police, they will be returned to prison.

Mr. Stafford: Are you talking more of a breach of probation or a new offence?

Miss Macneill: Both.

Mr. Stafford: But in a new offence, though, the Crown must more than suspect; it must prove beyond any reasonable doubt.

Miss Macneill: Oh, it does prove. I am not suggesting the Crown does not prove it. They have heroin in their possession. My point is

that the process of curing a narcotic abuser is a very long one.

Mr. Stafford: But the theory and practical problems on the street are two different things, are they not? The police, for example, cannot stand by and watch an addict dispose of his narcotic. Sometimes, it is a very difficult police job.

Miss Macneill: I am not talking about trafficking. You use the word "dispose". I am not talking about trafficking; I feel every trafficker should be arrested and incarcerated.

Mr. Stafford: Even an ordinary addict sometimes tends to dispose of what he has at the time, does he not? Certain action must be taken by the police. I could not quite get your emphasis on arrest, as if it were something that was wrong.

Miss Macneill: I can give you an example, a hypothetical example, of a man who got out of prison, came to Toronto and got himself a job. He did very well for three months. He went to work every day. Then he has an upset and meets some former associates. He goes to his boarding-house room and the police, with good reason no doubt, follow him there and find that he is in possession of heroin. The chances are that he will be arrested for possession, and in due course will be tried and returned to prison. Yet, in making an effort to work for three months for the first time in his life he has really made some progress.

● (11:50 a.m.)

Mr. Stafford: That is quite true, but sentences are usually left up to the judges or magistrates anyway; and how would you distinguish between taking certain cases away from the magistrate and not letting him do the job as he feels best and dealing with the even more criminal offender? Sometimes the dividing line between the two of them is very difficult to find. The only thing I was getting at is that by your evidence you tend to give one the impression that these people should be let out, to keep giving them more and more chances. Yet the Crown, in order to do anything with these people, has to prove its case beyond any reasonable doubt. Do you not feel that an institution like Matsqui on the West Coast is probably as good a place as any to treat many of these offenders?

Miss Macneill: Well, Mr. Stafford you missed the beginning of my statement.

Mr. Stafford: That is what I said.

Miss Macneill: My attitude to prison for addicts is that they are deprived of responsibility whilst in prison. They must be. The drug abuser does not have to take responsibility for any important decisions; work, food, clothing, everything is provided for him. Yet in my experience the drug abuser is a person who needs to develop responsibility. This is why a prison has never worked for him.

Lexington has not worked and the Lexington authorities are very frank in admitting this. The California experiment is not too successful. Matsqui has not been in operation long enough to assess. But there is a difference; I feel that the addict should be charged for the crimes he commits. If he steals, he should be charged for theft. He should be charged with any illegal activity. And if we made sufficient treatment facilities available, I believe that a large number of the criminal acts of addicts would be eliminated. The majority that I know steal for one reason, and that is to get money for drugs; or they steal drugs.

Mr. Stafford: Then the responsibilities that they had in society up till the time of their first conviction certainly did not work, or they would not be in trouble.

Miss Macneill: Very few of them had many responsibilities in society. Most of the people I know drifted—and I am talking about the street addict; they are a totally different type of person who uses drugs. They are people who abuse narcotics who appear to function quite well. I think we ought to look at other countries. There are many countries where the possession of a drug is not a criminal offence and where for many, many years the problem has been a medical-social problem. North America is really one part of the world that is very punitive in this regard.

Mr. Stafford: Do you have any idea how many persons could be convicted of offences such as you are considering now, and the number that are actually in jail?

Miss Macneill: I would not be prepared to give an estimate, but I know that there are a fair number of people who are using drugs, and particularly marijuana, which of course is in the same category as the hard drugs, according to the law. There would be a very, very great number of people in jail.

Mr. Stafford: And a very small number of the total is in jail.

Miss Macneill: Yes.

Mr. Stafford: Do you not think that our judges and magistrates today use the same discretion in these cases as they do in many others? This is the point I am trying to get at, but we keep running around in circles. Is there any other way of doing it? In Matsqui, for example, do you happen to know how many are there? That is one institution in Canada, except that certain people are at the women's institution in Kingston.

Miss Macneill: I have not really any idea. I think there are 300 men and 35 women; something like that. But, you see, the point is that they may be in Matsqui now, but in 18, 16 months they will be out. Then they will continue, in most cases, to use drugs, to steal to support their habit; and then they will go back again. So that our answer really is not cure, because it does not stop people from using drugs. It is in prevention. Obviously if prison was a deterrent there would be much less marijuana smoking in some places.

Mr. Stafford: Still, I do not see what you are getting at. I will try again. How are you going to control the ones that the judge feels should be in prison any better if they are walking around outside?

Miss Macneill: I do not follow you, Mr. Stafford, but what I am suggesting is that the treatment of a narcotic abuser is probably more effective in the community. I am not suggesting that there are not some people who abuse drugs who should be in jail. But I think you determine "what sort of man is this?" And if he is a thief, if he is committing serious crimes, he should be charged and convicted just like any other person.

Mr. Stafford: I was always under the impression that the magistrate already did more or less use his discretion along the lines that you wish he would. I put it to you that they already do this, more or less.

Miss Macneill: When I look at women of a certain age who have been in institutions almost continuously since they were 16, first of all in training school, then in a reformatory, then in a prison for women, for the offence of possession of narcotics, I must question the effectiveness of our system. I feel that if at some point in time these

women had been given probation, with treatment as part of probation, we might have cured them.

Mr. Stafford: I will be very brief about this, but that can apply to all kinds of people who have been continuously in jail for theft.

Miss Macneill: I think there is a little difference. I think that there are certain physiological and psychological factors about narcotics abuse that make it different.

The Chairman: I think, as I understood from your evidence, Miss Macneill, that your statement was that imprisonment was not a rational remedy for a drug addict; not a cure. I do not think you went so far as to say that a person who was in possession should not be apprehended and incarcerated for his own good. The progress that has been made in treating drug addicts is such that if a person appearing before a magistrate could, on a voluntary basis, be referred to a clinic for treatment, that might be an improvement; at any rate so far as that particular individual is concerned.

Miss Macneill: I would agree with this. I think that the person who voluntarily seeks treatment is much more apt to be cured than the person who has treatment imposed upon him.

The Chairman: The magistrates, in exercising this discretion—and most of them do exercise very honest and bona fide discretion—are dealing with the problem in the best way they can.

Miss Macneill: Under the existing legislation.

The Chairman: Temporarily at least it has some benefit on the drug addict because during the term of imprisonment he is off the drug. Is that right?

Miss Macneill: It has some benefit for society in that they are not out stealing to maintain their habit.

The Chairman: Yes, but what is the benefit to the addict?

Miss Macneill: I do not think there is much benefit to the addict in the majority of cases. I think there are few addicts who go to prison who have made up their minds.

The Chairman: Mr. Whelan, before you go, do you have any questions? Mr. Forest.

Mr. Forest: Is this research you are engaged in now financed by the provincial government?

Miss Macneill: Yes. I am an employee of the Addiction Research Foundation.

Mr. Forest: While you were at Kingston you probably met quite a few female addicts.

Miss Macneill: Yes.

Mr. Forest: They were all female addicts?

Miss Macneill: No, I am working with males, too.

Mr. Forest: While you were head of...

Miss Macneill: Yes, I met a great many; I think perhaps there would have been 200.

• (12 noon)

Mr. Forest: Would they come from a lower class?

Miss Macneill: Not necessarily.

Mr. Forest: No?

Miss Macneill: No; they come from all classes.

Mr. Forest: What was their general motivation? Was it because they felt insecure? Was that the general motivation for those people to take drugs?

Miss Macneill: They are people who moved into the abusing society of Vancouver or Toronto; and very often they have told me it was curiosity in the beginning; they were associating with these people and they were curious. Once they had used drugs they liked the effects. It made them feel better. I use the word "comfortable". I am not suggesting "comfort" in the sense of physical comfort, but they felt more able to meet people. Then, of course, becoming dependent on the drugs, they had to raise the money to finance this habit, and they became involved in prostitution and petty theft.

Mr. Forest: Was treatment available at this hospital for them at the time?

Miss Macneill: Not the people that I know. The Foundation in Toronto has been treating narcotics-addicts for only three or four years; and the Vancouver Foundation was established, I think, about ten years ago; but for the people I know, the majority of whom are now in their late twenties, there was nothing in the way of treatment available.

Mr. Forest: Is there now any alternative, other than prison, for those people who are found in possession of drugs?

Miss Macneill: There is no alternative should the magistrate decide they go to prison. If he decides that treatment might benefit them he may put them on probation; but in the Toronto area I do not know of many cases where narcotics-addicts have received probation. Some are paroled from institutions, but the usual procedure, when a person is convicted of the possession of narcotics, is to put him in prison.

Mr. Forest: Do you consider this a mental illness?

Miss Macneill: No, I would not accept it as a mental illness. It is a social illness which, I think, requires both a medical and a social approach. It requires withdrawal treatment, to start with. Any person who has been on heroin for some time is very sick when they stop using it; they must be hospitalized. But that is only part of the problem. This is why I am a little concerned with the wording in the Bill:

...the said clinic or medical practitioner...

A medical practitioner could deal very well with the professional addict, the person who has a job, has a secure position in society and happens to have become addicted to drugs, but those on the streets have so many problems. They have problems of employment; they have never worked; they have the problem of developing a responsibility for budgeting. They need a social and vocational rehabilitation program as well as a medical one.

Mr. Forest: Is there a class of addicts who cannot be helped and have to be confined?

Miss Macneill: I could not answer that question because I do not think there has ever been sufficient help available. I do not think we have even tested the possibility. There are, at the moment, some programs in the United States that are tending toward this total approach—a community-based program—for their rehabilitation. These programs have not been evaluated as yet. Day-top in New York is apparently getting some results, but there has never been this total approach. To prevent drug abuse and to get the most out of the individuals, in terms of productivity, this is what we will have to try.

Mr. Forest: Have you made any examination of the results of the new drugs we have heard about, such as methadone?

Miss Macneill: In Toronto I know a fair number of people who are being maintained on methadone and they are working and functioning very well.

Mr. Honey: Excuse me; is this under the supervision of your Foundation?

Miss Macneill: Yes.

Mr. Honey: Thank you.

Miss Macneill: And I know of others in Vancouver who are functioning under the supervision of a clinic there.

One thing that concerns me about the present situation is that the substitute narcotics that are being used, not under supervision—methedrine, the barbiturates and the amphetamines—are being abused. These are the drugs that cause aggressive, hostile behaviour.

Mr. Forest: There seem to be very few clinics in the country to treat drug-addicts. Do you feel that they should be used on a much larger scale?

Miss Macneill: I believe so.

The Chairman: Are there any further questions?

Mr. Honey: I have one question arising out of Mr. Forest's questioning, Mr. Chairman.

I will use Toronto as an example, because as you have indicated that you have had an opportunity to observe the courts and the drug-addicts there. Suppose a magistrate, in using his discretion, feels that a person charged with possession should be put on probation. Is your Foundation, or are other facilities, available to supervise the probation and to try generally, from a medical and social standpoint, to guide the offenders to cure and rehabilitation?

Miss Macneill: At the present moment, if a magistrate puts a narcotic addict on probation it would first be necessary to admit him to hospital for withdrawal and there are, at the moment, limited hospital facilities in Toronto for such treatment. Then, if the condition of probation was accepted by the clinic, he would leave the hospital and come to the clinic where he could be interviewed by various people; and the treatment the clinic felt desirable would then be supplied.

but we need far more facilities to conduct this type of program.

Mr. Honey: But it is available on a limited scale.

Miss Macneill: Very limited; I know of only one hospital in Toronto that will admit narcotic-addict for withdrawal—that is, a street addict. For a professional person it is a different story. There are private hospitals who will accept them. The street addict, however, has a very difficult time getting into hospital.

Mr. Honey: You told us previously that there should be far more facilities.

Miss Macneill: Yes; much greater facilities.

Mr. Honey: Why would hospitals refuse to admit drug-addicts?

Miss Macneill: All hospitals are very crowded and there are certain problems in the management of narcotic-addicts during withdrawal. There is always the possibility that they will take off from the hospital.

Mr. Forest: How many drug-addicts would there be in Toronto?

Miss Macneill: This is a very interesting question because, from my observation, there is a very great shortage of heroin at the moment in Toronto. I think there are probably 100 narcotics-abusers and perhaps another 100 who use them occasionally. There are people who use heroin perhaps on week ends, or once a month, but I cannot give a close estimate at this time. I might be able to six months from now.

(12:10 p.m.)

Mr. Honey: In your estimate of 100—pardon me—were you thinking about the...

Miss Macneill: Heroin.

Mr. Honey: ...heroin in the Dundas area?

Miss Macneill: No.

Mr. Honey: Is there any heroin being used in the Yorkville area?

Miss Macneill: Possibly yes. There are various areas of Toronto and you do not see any more of this concentration of the street culture in one area. There is some of the drug in Yorkville, I believe.

Mr. Honey: When you say 100, you have in mind only the heroin addict. Is that correct?

Miss Macneill: Well, the narcotic addict, excluding marijuana.

Mr. Honey: But you included the ones who are abusing barbiturates?

Miss Macneill: Oh, no. You could not possibly estimate. Barbiturates and amphetamines are in the hundreds, I should think, in all areas.

The Chairman: Does anyone have any more questions? Have you any comment to make, from your personal observations, with regard to the operation of the clinic and the use of the drug methadone?

Miss Macneill: I am not really qualified to comment on this, but I will say that the patients that I know who are using methadone seem to be either working or, if they are women, assuming the responsibilities of their homes; they are not engaged in crime.

The Chairman: It seems to counteract that feeling of withdrawal and inadequacy that they have. It seems to make them inclined to go out and get back into normal living again. Would that be a correct summation of it?

Miss Macneill: Yes, I would agree with that. I have found in meeting these people in cheap restaurants that in many cases they would like to get treatment. It is a pretty unhappy and miserable life, particularly at the moment with the drug so expensive and in short supply.

The Chairman: But is there available treatment in any large sense of the word?

Miss Macneill: That is true. When they come to ask, very often they must wait two or three weeks for an appointment, and then they become discouraged. But it is a question of availability of staff.

The Chairman: Apart from methadone, have you any information you could give the Committee in regard to other treatment that they could take which would help them to conquer this habit?

Miss Macneill: I referred briefly to Synanon and I think it is possible that in Canada we might explore this idea of ex-addicts—people who have been clean of drugs for 10 years or so—forming a small community. This is a very rough sort of treatment.

The Chairman: Instead of alcoholics anonymous, it would be drugs anonymous, is that it?

Miss Macneill: Not exactly, although it is comparable. Synanon was created by an ex-alcoholic in California—a man called Didrich. He gathered five or six drug addicts together and their philosophy is simply that drug addiction is stupid. They give the person who comes into the program a very rough time.

The Chairman: It is a matter of education, then?

Miss Macneill: Yes.

The Chairman: Does anyone have any more questions?

Mr. Forest: Do you believe in the treatment of drug addicts as out-patients of a hospital if there is no space available?

Miss Macneill: If they are withdrawn I think they can be treated as out-patients, but it is a very difficult thing to have a patient come to a clinic who is sick and who has been using a large quantity of heroin and expect him to go through the withdrawal process without hospitalization.

Mr. Forest: He would tend to relapse?

Miss Macneill: If he could get enough methadone for a substitute and be gradually withdrawn then he could be treated on an out-patient basis.

Mr. Honey: At the conclusion of the withdrawal treatment in a hospital, is the patient then on a limited supply of narcotics?

Miss Macneill: It depends on the patient. Some patients are withdrawn completely and they attempt to abstain and they need group therapy support. They need someone who will help them get a job, someone who will ensure that they have a decent place to live. Then these people can make it. But the majority of them do seem to require, for a period of time—more than three weeks very often—a hospital withdrawal period.

Mr. Honey: Then this is available if they require limited amounts of narcotics? And it would be available to the clinic for treatment under supervision?

Miss Macneill: Well, that is doctor's decision.

Mr. Honey: Yes.

Miss Macneill: It is entirely a medical problem and it could be a doctor's decision.

Mr. Honey: Thank you.

Miss Macneill: Mr. Chairman, I noticed in reading the Proceedings that there was reference to the violence of the crimes. I think there is a great misconception that the narcotic addict is a violent, aggressive person. I think that Judge Ploscowe, who was a director of studies in the American Bar Association, made a very sensible comment on this. He states:

...the realities of the relationship between narcotic addiction and crime appear to be much more sombre than the romantic myth, "that hold up men, murderers, rapists and other violent criminals take drugs to give them courage or stamina to go through the acts which they might not commit when not drugged". Dr. Kolb has labelled this notion an absurd fallacy. The crimes committed by addicts are generally of a parasite predatory non-violent character... Since opiate drugs do not act as a stimulant... should not confirmed addicts have a means of obtaining such drugs legally, so they will not have to engage in crime in order to raise the money necessary for their needs?

Now that is the quotation of Judge Ploscowe but I would say that in my experience with people using drugs now, in my studies, I would agree that they do not commit violent offences; they commit offences of shop lifting—

The Chairman: Dr. Fraser said the same thing.

Miss Macneill: Yes.

The Chairman: Thank you very, very much indeed, Miss Macneill. I wish to thank the members of the Committee for their attendance here this morning. Before we adjourn, may I announce that on Thursday our witness will be Dr. B. Cormier, Associate Professor at McGill University's Clinic and Forensic Psychiatry section. The meeting will be at 11 a.m.

Thursday, November 30, 1967.

• (11:10 a.m.)

The Chairman: Gentlemen, we have a quorum. I will introduce the witness and then we will proceed. We are still studying the subject matter of Mr. Klein's Bill, No. C-96, "An

ect respecting observation and treatment of drug addicts." Our witness this morning, who is sitting immediately to my right, is Dr. J. Cormier, Associate Professor of the Department of Psychiatry at McGill University. He is the Director of Forensic Psycho-Psychiatry at McGill University and Psychiatrist-in-charge at St. Vincent de Paul Penitentiary. This indicates that he has the qualifications of a witness from which we would very much like to hear.

Dr. Cormier, it is a great pleasure on behalf of the Committee to welcome you to our meeting today. We are looking forward with interest to hearing your statement.

Dr. B. Cormier (Associate Professor, McGill University Clinic and Forensic Psychiatry): Thank you, Mr. Chairman. I would like to comment about one of my titles, namely, Psychiatrist-in-charge at St. Vincent de Paul Penitentiary. I would first like to say above all that I am here as a doctor and as a professor, and any views that I may express on any problems that I may raise, do not by any means reflect the policy of the Solicitor General's Department. I would like to make this point clear.

I think I will probably leave you with a lot more problems, a lot more questions, than I will be able to provide answers and solutions for, because when people are sentenced under any law, if you work in a penitentiary and live with these people for many numbers of years as I have done, you will find that the penal institution comes at the end of a long judicial process and is the result of that. If it is possible that something can be done before sentencing or at the sentencing level, then you will have one type of penal institution with a certain type of offender. On the other hand, should these resources not be available or if the law is imperfect, and so on, then you still have the type of penal institution that can be run by law. By the very nature of a penal institution itself we have no say in who enters there. As a clinician in a penal institution—and it is not that I have had a very great experience with the treatment of addicts but I think I have had long experience—the problem that I would like to confront you with is seeing those people who, in one way or another, come to the penitentiary and who are drug addicts.

My first observation is that the laws which deal with drugs as a whole do not make a distinction between types of drugs. What are these drugs? I suppose some expert might come here and tell you what heroin is, what

morphine is, what LSD is, what marijuana is, what the barbiturates are, and what their effects are, and what their chemical composition is and so on. I am not competent to speak about these. However, as a physician I am competent to tell you that these drugs are not the same, they do not have the same effect and in my view they should not be treated in the same way. For example, the heroin addict and the marijuana problem are clinically entirely different and also very often the user is a different type of man. That is the first challenge. I do not think we take into account that the people who end up in a penitentiary under any law are a sort of mixed bag and they cannot be treated in the same way. This is a problem which I draw to your attention. I have no answer to it. All I can say is that these drugs are not the same. They do not have the same effect. Socially, as well as being the aim of the law—and law enforcement is for the protection of society—they do not have the same social implications.

Another matter is the problem of making a distinction. It is indeed very easy to make a distinction on paper between the user, which I think this Bill refers to and, in the jargon of the milieu, the one who is called the pedlar or, using further jargon, the one who is called the pusher.

The person who is exclusively a user—this speaks for itself; he buys drugs. I wish to speak as a clinician and as a person who is down to earth with respect to this problem, and if a person happens to belong to the rich class of society he will have a lot of money with which to provide himself with drugs in one way or another and no one will ever hear about him. However, if he is a member of the underprivileged or working class he will have to go to the pedlar and so on, and his chances of becoming involved with the law are considerably greater. I think this is a fact and again I have no answer for it. I merely say it is a fact.

It is very easy to say that a pedlar is simply a pedlar and not a user. This is quite arbitrary. You have to assess that in the case of every individual you see. A pedlar might well start by being a user and in order to get drugs he becomes a pedlar. Medically and psychiatrically speaking you then make a distinction between the pedlar-user and the pure user. I might see the necessity for making a distinction, but as a psychiatrist and a doctor I can tell you that the pedlar-user is simply a drug addict in the same way as the user is who can get it without peddling. I

would like to apply this same remark to another type of drug addict who is a user not a pedlar, but who may resort to illegal means, such as robbery, to get his drug. I am not referring here to someone who is a full-fledged criminal in his own right and uses drugs at the same time. I am referring to people who, like the pedlars, use illegal means, although they do not sell drugs, and commit offences to have enough money to buy the drugs.

• (11:20 a.m.)

Again, we need to take into account that legally, psychiatrically and medically, you are facing the same problem. This man is a drug addict and it is the drug addict that you have to treat.

In my view of the conditions as I see them, I face the same problem of treating for addiction the people described by others who come before you and present papers using the well-defined terms users, pedlars, pushers, and so on—the men who commit crimes to get drugs.

I am fully in agreement with the general principle of this Bill which I gather is that if it is a medical problem, it should be dealt with medically. I am fully in accord with this. But I think my remarks will indicate that we would be making an artificial distinction, from a psychiatric and medical point of view, in treating only the users, those who resort to criminal activity to get their drugs, and not the pedlars, those who have a full-fledged criminal career.

Now, also, this is the problem of how these people come to court. I would say that evidently if somebody from British Columbia were here as a witness, he would speak differently, as they have there a problem of addiction that is incomparable with the one we have had in the east for the past 20 years. It is coming now, it is going up, but it is incomparable; so, his experience might be different. In the penitentiary—and here I can only rely on my memory—I do not remember many men, maybe a few, two or three, who came for drug addiction. All the others came to the penitentiary through what I call the “back door”, because they were peddling, because they were processing, because they were committing other crimes in order to have drugs. I make the distinction here that these men are drug addicts basically and deserve the same medical treatment, and I think that realistically speaking, although I feel

that this Bill in principle should be put forward, at the same time it would be illusory. I would mention to you that we can treat the drug addicts while they are serving their sentences because, in fact, they come into the penitentiary not because they are drug addicts but they merit nevertheless to be treated as such because that is what they are. I am referring to those who come for possession, peddling and so on or who commit robbery in order to afford to get drugs; but basically their problem is addiction.

This raises then an important question. I am all in favour of treating all the drug addicts that we can under medical and psychiatric facilities, which we might discuss later on. But what sort of handicap do we have in treating them while they are under legal sentence? I am afraid these days you cannot avoid the problem of jurisdiction. Some may well fall under the provincial jurisdiction if they receive a sentence of two years and less. Two years and more, they will fall under the penitentiary system. So you cannot but make this distinction.

In any case the Bill here makes this distinction, but on the other hand, although the criminal law is under the federal jurisdiction from coast to coast, the problem of treatment and of providing the medical and psychiatric facilities to treat these people is entirely provincial. So that in studying this problem, if the law is essentially federal, then necessarily there must be some place where our provincial and federal governments come together to arrive at some agreement as to what sort of facilities will be created. Because once more, as a clinician, I can tell you this: that you can pass the best laws in the world, you can have the rights of men defined in the United Nations and in the Canadian Bill of Rights, but if you have no institutions to see that the citizens enjoy these rights, I am afraid this is just a start.

You might be surprised to hear me talk this way but I think that 15 years of life in a penitentiary allow me to say certain things that others cannot who have never gone to prison, never worked in it. They can plan nice, schematic programs of treatment and distinguish between users, pedlars and so on, but I am afraid that that does not correspond to what it is when you are—what I call in French—“dans la soupe” (in the soup). Well, I am “in the soup” and I want this because of the men who are “in the soup” today. I happen to be an academician,

—a university person involved in research. You will have had other professors here, but I think very few who can tell you that their work is to be with the boys in the penitentiary. So here I am.

Now I will just say a word about treating addicts under sentence. The type of sentencing that these people will receive is exceedingly important. I am afraid that anyone here is under some sort of illusion if he feels that by sending a drug addict to a penitentiary for two years and more even if he receives treatment while he is in the penitentiary, he will come out and not face the same problem. This does not correspond to my notion of treatment.

• (11:30 a.m.)

Addiction is a chronic problem, and anyone who has the notion that a single intervention would succeed in rehabilitating a person would be expecting a miracle. I have never known it to happen with alcoholics or with any other type of addiction. We proceed by a trial and error method. We give the person a series of treatments to begin with, and at a certain time we feel that person is ready to leave. He may, for the first time, succeed in abstaining from drugs for four months but in the fifth month he will relapse and then a short return to the penitentiary to rehabilitate him is necessary. With the necessary withdrawal treatment, he may succeed and be sent back into society.

In other words, any system of sentencing drug addicts which does not include a proper program of treatment will fail; it never has succeeded and it never will succeed. I think this is pretty clear. Many examples could be given in respect of other types of illness and this one does not differ from the others either from the psychiatric or the medical point of view.

In practical application, this means that if we are to treat in the penitentiary setting it is obligatory that we have a system of sentencing that provides for a quick return to society under supervision as well as a quick return to penitentiary, if necessary, within the sentence period. However, we must recognize immediately that in a federally-involved prison system for the treatment of addicts federal jurisdiction states the day, the hour and the minute the sentence is to terminate. This does not necessarily mean that the person who is in need of treatment does not need treatment any longer. Again I have no solution. But those who skirt the problem of

jurisdiction in that field miss the most important aspect of the problem, the necessity of ensuring the continuation of treatment.

There are those who may come and present to you a nice picture, saying that they will set up an institution where drug addicts will be voluntarily committed and so on. We must recognize from the very beginning that drug addiction poses a very difficult, if not an impossible, problem when treatment is begun on an out-patient basis. So, call it voluntary commitment, if you will. If it is really voluntary on the part of the addict and he is well motivated there will not be too much difficulty. However, if he volunteers to be committed to a provincial institution for treatment I doubt very much, legally, if after two months he decided to leave that you could hold him. This question is now under very close scrutiny in certain parts of the United States where civil liberty organizations have brought cases, and of course I cannot anticipate court decisions. It remains that a citizen is a citizen and the state of mind he is in when he commits himself voluntarily under the influence of drugs, and the state of mind he is in two months later when he is free of the influence of drugs are two different states of mind, so you can see that the question of civil commitment of the drug addict poses a fairly complicated problem.

I would like to point out another legal aspect in the treatment of drug addiction. In reality, we are not so much dealing with drug addiction itself because a drug addict never comes to our attention unless he has interfered with some phase of our society by creating a social disturbance, and so on. Let us use the example of drunkenness: one is really not arrested because he drinks too much but because, having drunk too much, he performs certain acts in public that interfere with social life. Members should keep that in mind when legislating drug addiction. As a doctor I feel that drug addiction is a very serious problem; so is alcoholism and all the others. As much as I would like to make clear that somebody living permanently under the influence of drugs is not living a healthy life, the arrest, trial and condemnation of somebody who does not interfere with society and whose detention is not necessary for the protection of society is another problem we have to deal with if we are to cope with the total problem.

In respect of these drug addicts who are in and out of penitentiary and living with criminals, let me say to you that there is a lot

to be said for this treatment. There is ample evidence, despite all the problems I outlined today, that with new treatments, new approaches and the type of education we use in mental health, some years from now we will have about the same degree of success with drug addition. And if we want to take a very broad view of it, it may well be that in the future, if a drug addict does not interfere with society, does not damage himself unduly and others, we will be obliged to respect his wish in the same way as we respect the wish of the alcoholic who does not interfere with society. This is the sort of thing we should always have in mind when dealing with a man's habits, character and so on. When we draw up laws I think it is paramount to keep in mind the individual right as well as the rights of society. You know, if a person knows he has a fatal illness he may have the right simply to say that he prefers to die with his answer rather than have someone intervene. On the other hand, in cases of contagious illnesses we have laws to enforce treatment—an example would be syphilis—where society is involved.

• (11:40 a.m.)

To conclude, may I say that this Bill is opening many doors in respect of many problems, and it is for that reason I was happy to come here. I think I kept my word. I told you that you would have more solutions and more problems than answers, and here I am.

The Chairman: Thank you very much, Dr. Cormier. Before throwing the meeting open for questions by the members I would like, if possible, to have a motion regarding Tuesday's proceedings. You will recall that we did not have a quorum during the proceedings and the motion would be to the effect that we print as usual the evidence taken at Tuesday's meeting as part of the Minutes of Proceedings and Evidence of this Committee. Would someone make that motion?

Mr. Otto: I so move.

Mr. Gilbert: I second the motion.

The Chairman: Is there any discussion? All those in favour?

Motion agreed to.

The Chairman: Then, would you make a note of that, Mr. Stewart?

Now the questions.

Dr. Cormier: Mr. Chairman, as these things are printed, I give my permission to put my text in very correct Queen's English.

The Chairman: I have on my list, Mr. Stafford, Mr. Otto, Mr. Cantin, and Mr. Gilbert, in that order.

Mr. Stafford: Mr. Cormier, we had here—

The Chairman: Dr. Cormier.

Mr. Stafford: Oh, Dr. Cormier. We had here the other day a Miss Macneill, formerly superintendent of a girls' training school in Galt, between 1961 and 1966; superintendent of a prison for women, and now a consultant with the Alcoholism & Drug Addiction Research Foundation in Toronto, who testified to the effect that users need to build up their confidence. They must be given responsibility in conjunction with treatment, which can be done more successfully outside an institution than inside. What would you say about that? Those may not have been her exact words but they were to that effect. How would you comment on that?

Dr. Cormier: My comment would be a down-to-earth inclination to deal with these people either as drug addicts or as criminals. The last stage of treatment is necessarily in free society; otherwise you cannot assess the effectiveness of your treatment. The test is in re-entry into society. That is what I had in mind when I said that a system that will sentence a drug addict to five years in the penitentiary will do nothing for him except to deprive him of his sources during his stay there.

As far as I am concerned, when I see them in provincial jails waiting for trials and so on, most of them are, so to speak, dry when they arrive. And they serve their sentences relatively well. So the test is always in society and it is encouraging today, especially if provincial governments create facilities and encourage research and treatment, to see that the drug addicts themselves take the initiative and participate in their own treatment. It is a little like the AA, if you wish. To sum it up in a phrase, treat the product by the product. My answer to that is that the last test of any treatment of drug addiction is in free society.

In this sort of thing I am talking about now, the drug addicts, as in AA, now make a very serious attempt to help the professionals by helping themselves and teaching each other. I think there was an excellent film made either by the CBC—I think it is the CBC—or the National Film Board on a house in New York State. I have personally used this film both for teaching and treatment. It is called

"The Circle". In it you will see a residence for drug addicts where there is only one professional; the addicts try to cope with their own problem. The name of the house in New York State is Daytop Village and the name of the film is "The Circle". It is certainly available because I have used it for teaching and for treatment. As much as I feel from my contact with the addict that a withdrawal period is a necessary stage in the treatment, in the last run it is in the community that you must send these people. In that sense they are not different from the criminals. You can give all kinds of treatment in the penal institutions but it is in free society that you see the result. And may I point out again, if I have not made this clear enough, that any treatment program under any sort of commitment, legal or otherwise, that is not followed by a program of treatment in free society, is bound to fail.

Mr. Stafford: So then, if I understand you correctly, you say that treatment is much more effective or, perhaps, can only be given in a free society in cases like this, and not in the institutions. Is that correct?

Dr. Cormier: No, I did not say that exactly. As I think Dr. Naiman said last week, we have to distinguish between drugs, you see. Again I am coming back to my point. You cannot treat heroin as you do marijuana because the matter of addiction for the last that I mentioned is questionable; it is not as if you are an addict to heroin. Any one of us here can become an addict. You know that after a certain amount of injection or intake you are, as I would say in the jargon, hooked, whether you want it or not. So there is not the same problem of treatment as with another drug that is not addictive in nature. So again this comes to my point that I am always worried about. People sometimes look at the problem as a whole and not at the specific aspects of it. Some specific aspects of the problem are that all drugs are not the same, neither in their nature or in their effect on the body and on behaviour. For example, some drugs produce behaviour unacceptable to society.

Mr. Stafford: Would you just explain once again where you feel that treatment should be given in a free society outside an institution and treatment inside an institution. Could you just make it a little more clear?

• (11:50 a.m.)

Dr. Cormier: If we take it the way things are now, when a man comes to a penal

institution, provincial or federal, and he is under sentence, the problem is a clear-cut one; you have no choice. This man has to be treated within the legal restrictions of his sentence. So this makes the problem clear. So my point is that during this period of sentence you should do everything you can to prepare this man to go out. My point was made also that if the man comes to serve a sentence of five years I might as well do nothing because the treatment resides in sending him into society under surveillance, and so on, and if he relapses he is brought back. This applies to somebody who is being treated under sentence. If somebody is treated under some form of civil commitment, and there is a question at what point it can be done, it then becomes a medical problem entirely. The doctor must decide after the patient has been there three months that he can go out and that a follow-up will be done. He will be treated as an out-patient, and so on.

The technique of the follow-up will be determined medically as to whether methadone, which is a substitute for the drug, should be given or whether any of the new techniques that are used should be tried, and so on. If this man is being treated as a voluntary patient the doctor may say, "You have to come back because you are again on the drug". This can sometimes take place years after his discharge. Knowing Miss Macneill I think what she probably meant—I know she did not say this but I think she will agree with me—is that treatment in a hospital or in a penitentiary, no matter where it is, is bound to fail if there are no facilities to carry on treatment after discharge. It is as simple as that.

If you want an example in another field which is related to this, consider the matter of drunkenness. You see these drunkards in the penitentiary and sometimes they are merely charged with vagrancy or some other charge, but when you go beyond the charge you find that their behaviour was associated with intoxication. You sometimes see pages of charges of drunkenness and they are sentenced to two weeks, two months, and so on. When I say pages I mean literally pages. These men are put in jail for three weeks or two months during the winter season, that sort of thing, and then out they go. A judge on seeing these many pages of charges may say, "That is enough. I sentence you to two years in the penitentiary".

I have in mind a specific case that came before me in the FPS two days ago. I do not know if you are familiar with the FPS but there were three pages of charges for drunkenness, vagrancy, and that sort of thing, and two sentences of two years each, one of which was current and one ten years ago. What did we do for that man? Absolutely nothing. He was on the street in a state of intoxication and he went to jail. He also came out of jail. The problem is still unsolved. Apparently nobody wondered who this man was who was breaking the law. Apart from putting this man in a cell for so many months, and that sort of thing, what can we do for him?

Mr. Woolliams: I have a supplementary question. The situation is even worse than you suggest because if there is a difference in the material worth of A and B, B will be as you describe but A will probably have some means of living at home even in his alcoholic and drunken state. It is the fellow without means—a law for the rich and a law for the poor—who is confined to jail and who eventually has to steal or resort to false pretences in order to make a living or to buy whiskey.

Dr. Cormier: I am pleased to hear you say that. I would like to say once again, and this is my personal thought, that even in an advanced country like Canada where we have been working with prisoners for many years—and I say this not with cynicism but with sadness—that there is a justice for the rich and a justice for the poor.

Mr. Woolliams: You are right.

Dr. Cormier: I would also like to say that there is a law for the poor drug addict and a law for the rich drug addict.

Mr. Stafford: On that same question, if the person who is charged under the Narcotic Control Act and who, as you put it, uses narcotics will co-operate in receiving treatment can it be done better outside or inside an institution? That is the question I am trying to get you to answer. If he will really co-operate, and take the treatment do you think it can be done better outside an institution, for example, or can it be done better in an institution like Matsqui?

Dr. Cormier: I would like to have the advantage which a psychiatrist, who never entered a jail or who never worked in this field would have because the answer would then be so simple, sir. It would be, "Yes, you

are right, he should be treated that way. However, from my experience I am obliged to tell you it is not as simple as that. You referred to an institution and, as in the other points I tried to make, one is obliged to make a distinction. What is the institution to which you are referring? Are you referring to a federal institution where men are sent under sentence or to a provincial institution where men are sentenced to the due process of law but where the jurisdiction is not the same as the federal penitentiary? Are you referring to an institution where civil commitments for drug addicts are accepted—and I point out that the legality of this is in question—or to an institution where drug addicts or alcoholics simply come to your door and say, "I have reached the bottom; do something for me".

The answers are quite different if you are dealing with four types of institutions. I can think of some other types but I think four will be enough for the moment. All I can say is that the answer is quite different for each of these four institutions. I would like to be able to give you a yes or no answer. I can give you an answer in order of priority. In my view if you can reasonably avoid legal sentence for treatment I would say that would be the priority of choice. However, it would be unrealistic if I told you that there was always possible because drug addicts enter the prison system through the back door. They are not charged with drug addiction but they are basically drug addicts. You have to deal with each institution on its own merits as to what can be done. All I can say in answer to your question, if you want my personal feelings, is that I do not like to see a user sent to a federal penitentiary.

Mr. Stafford: If you can avoid imprisonment—

Dr. Cormier: Yes.

Mr. Stafford: —and the user will take the treatment—

Dr. Cormier: At all costs.

Mr. Stafford: —keep him outside.

Dr. Cormier: Yes, but I must point out to you in order to have a very complete and practical view of this thing that under the Constitution it is a provincial problem. As we understand the Constitution of this country health comes under provincial jurisdiction and we know that the facilities in our provinces vary from nil in most cases to some few.

Mr. Stafford: I wanted to ask if you knew anything about the institution at Matsqui?

(12 noon)

Dr. Cormier: I know of the institution although I did not visit it. I have a lot of misgivings about this institution. This is not criticism of federal penitentiaries, it is just my views on it. Mr. Koz is here and I hope he will take a note of that. It is my personal view that wherever possible drug addiction should be treated outside penal institutions. You have my views about Matsqui. I should say, in fairness to the federal penitentiary system, the fact that you have a great many addicts within your system has nothing to do with the Commissioner of Penitentiaries, the Minister or the Solicitor-General because they cannot stop a drug addict entering a penitentiary; it is a matter of court decision. That is why I insist so much on the importance of the law. I mean if the law allows you to commit people into the federal or the present provincial system, and those people should not be there, what can you do? You should tackle the problem at the root. They will say that the judge sitting on the case should be able to exercise his own discretion and say, "What are you ready to do?" In most provinces the judges are not in a position to do this, but at least it will stimulate them to think. If a judge has at his door, at my stage, 25 addicts is he not obliged to think?

Mr. Stafford: I just want to point out that we are interested in what should be done and not the situation as it exists today. What do you think should be done?

Dr. Cormier: Well, I will take the positive approach and say, in respect of my province, what I would like to see the Minister of Health and the Minister of Justice join forces and create institutions of treatment and research, affiliated with universities, and institute very progressive measures to tackle this problem immediately.

Mr. Stafford: What measures do you propose?

Dr. Cormier: Different measures may be required for different provinces. The solution to the problem in my province may differ from the solution in British Columbia where they have had the problem for some years.

In my position as a psychiatrist at both the university and the penitentiary I have noted,

over the years, that the problem they in the West have is moving slowly toward the East. One of the apparent reasons for this is that these people tend to migrate to centres where the law enforcement agencies are not yet acquainted with the seriousness of the problem and they know they can more freely get away with it. I think now is the time for the provinces in the East and the Province of Quebec to do something, when the problem is not acute—although it is rapidly approaching this stage.

Mr. Stafford: You keep saying they should do something. What we want to know is what is that something that the Province of Quebec should do. Forget the laws as they exist today; what should they do? What practical steps should we take to try to alleviate this problem and cure those people who are using narcotics?

Dr. Cormier: I thought I had answered your question. If you want me to be specific, I say build a centre, build a hospital, train people, interest psychiatrists in the problem, give them fellowships, let them visit other centres that have experienced this problem, let them visit California and New York State to see what they do about it there, select the best solutions found in other countries, and above all, study the complete legal aspect of it so that we do not end up with what has been described as one threatment for the poor and another for the rich and so on. Also, we should clearly establish what the social problems and the individual problems are. This is what I feel should be done.

Mr. Stafford: I have one final question. Once you did all of this—closed the institutions and trained people in the way you just mentioned—do you feel it would be better to let those people come to that centre and take treatment voluntarily rather than lock them up behind bars while they were taking it?

Dr. Cormier: Once again, I cannot answer with a yes or no, but where such a solution is possible we should select it. I did not come here to say that a man in the street in a state of rage and in a destructive mood should not be arrested and something not done for his own protection and that of society. So I cannot answer yes or no.

Mr. Stafford: Of course my original question was: If the user would co-operate and take the treatment, would he be better outside than in?

Dr. Cormier: Then my answer is unequivocal: this is the treatment of choice.

Mr. Otto: Dr. Cormier, you have indicated by your remarks here that after 15 years you have gotten down to the basis of the whole question of drug addiction; you mentioned that each of the drugs poses a separate problem. I understand that in effect the reaction on the user is more or less the same with the opiates—that is, heroin and its derivatives. Is there a similar reaction with the use of the psychedelic drugs? I understand that the opiates allow a user to pass out of this world quietly, so to speak, but there is no reaction on society because the tendency is to be inactive. What is the reaction in the case of marijuana and the other psychedelic drugs?

Dr. Cormier: I cannot say too much on that but I can suggest, Mr. Chairman, certain experts who can really give you the absolute answer. All I can say is that if a person takes heroin, for example, for a certain period of time that person will be "hooked". On the other hand, one has to admit that there is a tremendous amount of difference in the individual's tolerance. Some of our greatest writers have taken it for years and years and it seems not to have impaired their intellectual functions or their capacity to live in society and be productive. One has to make all sorts of distinctions. It would take an internationally known expert like Doctor Lehmann of the Douglas Hospital to really answer what the specific effect of each drug would be. I do not think I should venture into this field.

Mr. Otto: I asked the question I did because you had given us your philosophical view of what society's reaction is, and since you have made a distinction between certain drugs it would seem, from your viewpoint, that a person who is, say, addicted to heroin does not as a rule cause any danger to society.

Dr. Cormier: I did not say that. I said some do and some do not.

Mr. Otto: Well, other than stealing in order to buy heroin—I am presuming that heroin is available very cheaply—what is the effect on society other than the fact he becomes a non-productive person?

Dr. Cormier: Well I cannot give you a simple answer to that question. I can say, for example, that they have a freer approach to

the problem in England and they will make available to their people medical drugs to keep them in society provided they do not endanger that society. That is one approach to the problem. Another country might prohibit the use of a drug rather than regulating it. I am not here to discuss the merits of one or the other but to point out that it is not a simple problem and many attempts are being made to control the problem, medically and otherwise. Even medically speaking, I cannot describe the treatment techniques and tell you the principle of it. Again here I can suggest to your Committee experts in the field who do research and treatment. In this famous methadone treatment where methadone is substituted for heroin, for example, you will have some addicts taking methadone for years, and sometimes for the rest of their lives, possibly, while others will take that substitute for a certain number of years and then give it up entirely. So the methadone treatment is a medical treatment that substitutes one drug for another because it is felt that the second drug is less damageable to the individual who, with this drug, can lead a successful, law-abiding life. This is the sort of thing we have to think about.

• (12:10 p.m.)

Also, as I think Dr. Naiman in his presentation here mentioned, a lot of research has to be done on drug addiction; for example on what I would call medically the natural history of drug addiction, which is not unlike the natural history of criminality. The reason for this, as my associates and I at McGill have found in our studies, is that we know that criminals, even the persistent criminals do fade away in life. Where they go is another matter I do not want to discuss here because it is not exactly relevant, but they take many pathways.

It is the same thing in drug addiction. There is more and more study now that reveals that after a certain age, we all mellow; for some life starts at forty. I find that a very sad statement because there are so many things that you can do before you reach forty. But it remains a fact that sadly enough some people start to live at forty and possibly stop at that age to be drug addicts or alcoholics. So we are really facing the fact that—and I will underline it—drug addiction is more than a man who takes drugs. It is the problem of a man who has difficulty in all areas of his life in adjusting to life compatible with his immediate family and friends.

and with the society of which he is a member. This is the problem of drug addiction. For that matter this is the problem of alcoholism. For that matter this is the problem of the criminal. We make a mistake if we see the problem of taking drugs, and we make a second mistake if we see the problem of the criminal as only the problem of doing certain things that are indeed forbidden by law and should remain forbidden by law. When we have said that he has done this act, then it is there that the problem starts. It is in that perspective that I look at the question.

Mr. Otto: That is exactly what I wanted to get from you. If we are going to differentiate between the drug addict and the alcoholic, and the criminal, then we must try to find a reason. We know that criminality probably has the same basic cause as addiction—the inability to adjust. We know that the criminal may be and is of danger to the rest of society. Therefore we lock him away. We know that the alcoholic is partly productive and does not present the same danger and therefore we have different laws. Now what I am asking you is: when you come to the drug addict, is he in the same class as a danger to the rest of society because of his addiction as the habitual criminal, that we should also apply criminal law to the addict and put him away? Or is the addiction in itself—and I am not speaking of the crimes perpetrated to buy the drugs; I am speaking of the addiction itself—as much a danger to society or to property as the habitual criminal?

Dr. Cormier: I think you have made the distinction yourself and that my answer is just to repeat it in some other way, in other terms. If somebody happened to be an alcoholic and a criminal at the same time there is no doubt in my mind that the due process of law must take place and we have to treat him both as an alcoholic or as a drug addict and as a criminal. On the other hand, you know and I think that is what you want to say, if he is only a drug addict, even if he is not productive to society, because some are and some are not, and does not endanger society, I think that we have no right to treat him as if he did. This is my point. I think that is the point you were making, too.

Mr. Otto: That is the point. In fact, I was going to mention that at one time when a productive member of society was very, very important, this may have had some applica-

tion, but today it is questionable whether every member of society must be productive because obviously we have hippies and others who go their own non-productive way, and society not only tolerates them but can accept them. Production is no longer as important as it used to be.

The only other question I would like to ask is this. You mentioned there were some cases of drug addiction which probably in your experience you have come across, which were caused originally either by accident or by medical treatment; in other words, by the introduction of drugs not caused by a lack of adjustment to society but strictly accidental. Have you found in your experience that those cases, once they have been treated, have been successful as compared to the other ones who became drug addicts because of some inability to adjust?

Dr. Cormier: I will answer from my experience in the encounter of such cases. I would say that drugs of the pain killer or anxiety reducing types such as morphine or demerol—I do not think heroin is much used in the hospital—are used, evidently, and that maybe many of us here have had them on medical prescription in hospital while undergoing surgery, or that sort of thing. It is obvious that in hospitals, on principle the drug is reduced, as it should be, and when the person is discharged the experience terminates there. He does not have a craving for it. In my experience, those who, after having received drugs in hospital for killing pain, or reducing anxieties or pre-operation or that sort of thing, become drug addicts before and after leaving the hospital, and the craving remains are personalities that are pre-disposed to become drug addicts and they had found in that experience what the great majority of people do not find: that is, what I found when I received it personally; that it was only to make me more comfortable and be a better patient and allow the doctor to treat me better. For the others, it might be an occasion of mobilizing latent potentiality to become a drug addict. You will find that a certain number of these people become very skilful indeed in faking all sorts of symptoms in order to get the drug again. This may happen. We are becoming more and more acquainted with this in hospitals. It is like the men who come in with all sorts of symptoms and under normal conditions we would be justified in giving them these drugs. They always come back. Then somebody starts to become suspicious. The person who does this

is usually a special type of addict who will try to use the doctors and the facilities of the hospital to obtain his supply of drugs but fortunately the hospitals are becoming more equipped to detect these types of cases.

• (12:20 p.m.)

Mr. Otto: This is my final question. Presuming this bill becomes law and presuming some of the ideas that you and Mr. Stafford expressed become fact, in your opinion do we have enough trained people and enough staff to make any headway at all with this whole problem of drug addiction?

Dr. Cormier: As I now know the over-all picture in Canada, my answer is absolutely not.

Mr. Otto: Thank you.

[Translation]

Mr. Cantin: Dr. Cormier, this morning you raised problems of priorities and treatments, and legal and constitutional problems, and I remember from your testimony that you did not believe the law could provide a lump solution to the problem as a whole. Would it not be a practical solution if the law were amended—and here I should like to have your opinion—so as to ablige the court to offer a person charged with this crime (for the law now makes it a crime), to offer him treatment before the sentence? And to the extent that this person submits to treatment voluntarily, the sentence would be suspended for the duration of the treatment?

Dr. Cormier: Not knowing your personally, I can say that inasmuch as I am the one who presented this solution, I find it excellent. To tell the truth, I am not an expert on drug addiction, but since these problems come in through the back door, if one may say so, I shall tell you about an experiment tried in California and which is, at the moment, if you like, in the working in period. Let us take the case, for example, of a multiple repeater of habitual or persistent criminal, call him what you like. The judge examines the pre-sentence report and tells him something like this: You have received so many sentences, here is your record, and so on. One of two things: either I sentence you to five years (or any other number of years) in prison, or else I give you the following alternative: you are going to prove to me that during those five years, you are capable of living freely in society while respecting the freedom of others, and that you, yourself, will live in conformity with the laws. We are

going to give you some assistance, however, so that you can do that. You have a choice: which of the two alternatives do you choose? This corresponds to a similar experiment which was done in another field. It seems, for the moment at least according to the article I read, that this experiment still going on is a success. Therefore, in my opinion it applies not only to drug addiction or other problems of the same kind, but also to other criminal problems. Once again—I am repeating myself for I want to emphasize those problems, that is the problem of drug addiction and that of crime in general—it is not only a problem limited to the taking of pills and doing illegal things; it all constitutes a total problem of a man's personality and a total problem of society face to face with this man also.

Mr. Cantin: Yes, I understand. But for the moment, do you not believe that it could serve as a solution to the problem of those who are addicted to drugs?

Dr. Cormier: It would be an experiment worth trying, in other words, we now have all the data to enable us to say that such an experiment which, I believe, has some chances of success, would be wonderful.

[English]

The Chairman: Mr. Gilbert, Mr. MacEwan and Mr. Whelan.

Mr. Gilbert: Mr. Chairman, the previous questioner asked the very question I was going to ask.

The Chairman: Did you get the answer you hoped to receive?

Mr. Gilbert: Yes. I am just going to develop it a little more with Dr. Cormier. You said that among the people you treat in the penitentiary a few come to you by way of being directly charged with the possession of narcotic drugs but many more come to you by way of the back door. They are addicts but they are charged with a criminal offence and enter the penitentiary that way. It seems to me we have an analogy here with people who are charged with an offence and plead insanity. If the plea is proved the accused is then committed to an institution at the pleasure of the crown until he is fit to stand trial. It strikes me that when a person appears before the court who is either charged with possession under the Opium and Narcotic Drug Act or with an offence under the Criminal Code and he lays before the magistrate the defence of addiction, and we now

know that addiction to a drug can be proved quite easily by a simple test, and if he is "hooked", the magistrate should have the power to refer him to an addict research centre rather than to a penitentiary. There he can be treated by men like yourself and others who treat not only the addiction but the social and psychological problems of the man as well. I also believe he should be retained at the pleasure of men like yourself until you feel that he can take his place in society. You said that men who have been charged with addiction and receive a five-year sentence merely go to jail and dry out and then stay there until their term is ended. I do not believe that is the solution to the problem. As you said—and I thought you said it very eloquently—it is a matter of getting the man adjusted back into society, and it is men like yourself and psychologists—

Mr. Otto: But we do not have the men and we do not have the institutions, and we will not have them for many, many years.

Mr. Gilbert: Mr. Chairman, I should say to my hon. friend on my left that we always start from our present position and then move on to the position we would like society to reach.

• (12:30 p.m.)

Dr. Cormier: I think this is correct. I do not know if I am old enough to reminisce about my past. I have some right to, I suppose, being the first psychiatrist attached to a federal penal institution in the Province of Quebec; this was in 1955. I think we have travelled quite a long way since. Also, in being attached to a university as a professor, I am pleased and rewarded—you meet some rewards sometimes in that field—to see that students of mine are working in the field. So it is the same thing with the field of addiction. We must make a start, and I think the start will be likely to come with men who may be encouraged by their government to enter the field and make a career at the highest standard possible. This is very important. I have personally enjoyed, despite many problems and difficulties, and sometimes great difficulties, every year that I have spent in the penitentiary, not because I was in the penitentiary but because I was at the same time a professor involved in research and teaching and training and that was a full career for me. If you cannot offer that to doctors entering this field, I doubt if you will succeed.

I would like, however, to comment on the question of indeterminate sentences at the discretion of the court. I have very great reservations—not to say I am practically opposed to any type of indefinite preventive detention. In other words, if you speak of the type of sentence that allows a reasonable minimum and maximum, both minimum and maximum, then I will buy this. But if it is absolute indeterminateness, I am afraid that you will put your clinicians in situations where they can hardly do anything. The second thing is that as a psychiatrist, if I may be frank, I have enough of my work to do without doing the work of the court. If somebody is sentenced under a court, I think it should be the court's responsibility to release him. My duty, I feel, is not to make the decisions for the court but to give them all that I honestly know on this individual, his future and his capacity to re-integrate into society. I do not know if you meant that the psychiatrist should make the decision, but if you meant that, I would disagree.

Mr. Gilbert: What you are saying is that there should be two safeguards.

Dr. Cormier: Yes.

Mr. Gilbert: First of all, the accused should be brought back to court say six months or three months later or whatever term would be agreed upon, and then should be subject to the report that you have submitted to the court.

Dr. Cormier: Yes.

Mr. Gilbert: And the magistrate or judge would make the final decision.

Dr. Cormier: If I may cite here an example of the type of indeterminate sentence that I am all in favour of, it is the Danish type of indeterminate sentence. I am not too sure about the minimum but the numbers are about right. It is two to six years; the minimum two, for example, and the maximum six years. This applies, for example, in the case of the dangerous sexual offender. Then in the institution, which is one of the best known institutions for the treatment of habitual criminality in Europe, the medical staff have to make their decisions and so on, and sometimes during the time of the indeterminate sentence—two to six years, for example—they come back to the court and give all their evidence and then the man is released on parole for the rest of his sentence. If, after the end of six years, the judge

feels, after he has received all the evidence, that it is not safe to return this man to society then, again, new procedure has to be taken to renew the six years. I know from Dr. Georg K. Sturup, Medical Superintendent of the Herstedvester Detention Institution for Abnormal Criminals in Glostrup, Denmark, that it is the exceptional case that is not released after six years. You see that this philosophy is quite different from the indeterminate sentence that we have in Canada under the Criminal Code and the dangerous sexual offender.

Mr. Gilbert: One more short question, Dr. Cormier. You made a distinction between (a) a user, (b) a user-pedlar and (c) a pusher, who would be a non-user, I would assume.

Dr. Cormier: Sometimes.

Mr. Gilbert: I was not sure whether you had made the distinction on three grounds: the first on the user and the second on the user-pedlar and the third on just the pusher, who is a non-user. But with regard to the pusher, the reason he is pushing is that he is making money from the drug. The question arises, should we take the profit motive out of the drug and make the drugs available to the addict under controlled conditions?

Mr. Whelan: There is no advertising involved in that either.

Mr. Gilbert: That is right. The pedlar is the same as the bootlegger with regard to alcohol. We make alcohol available to the public and what I am saying is that possibly we should use the same system as they use in England in the narcotic clinics—making the drugs available to them under controlled conditions.

Dr. Cormier: My answer to this is that we have to start to build a house right from its foundation and sometimes we try to solve the whole problem by a drastic measure without having taken all the central measures that we should first take. For example, if we have these institutions and these facilities for treatment, if we have a number of addicts that elect to be on maintenance treatment like methadone or others, which I hope your experts talk about, if we have all these facilities, then certainly the pusher will not have the same role in society. If we create that first, we will be facing the real problem. Now we are not facing the real problem because of this lack of facilities. So at pres-

ent I have very great reservations about a law in this country that would allow free distribution of the drugs before we establish—and I would say this is urgent—these foundations. Is that clear?

Mr. Gilbert: Yes, I understand it. I think you are quite right. Thank you very much.

Mr. MacEwan: Dr. Cormier, to your knowledge, what type of treatment, if any, is carried out in prison for these addicts? That would be St. Vincent de Paul, with which you are familiar. Is there any treatment other than...

Dr. Cormier: Are you referring to a specific regional complex of federal penitentiaries the same as St. Vincent de Paul?

Mr. MacEwan: Yes.

• (12:40 p.m.)

Dr. Cormier: We have no special provisions. The man comes with his problem and, in so far as we have the staff, the time and so on to give him treatment, we will. Evidently, in the penitentiary system, it is not a problem of withdrawal; it is trying to tackle the personality as a whole. According to whether he is paroled or not, the issue may be quite different. For example, if we think a man serving a sentence of five years is likely to be released on parole after two and one-half years or so—the decision is not with the penitentiary system—and he comes to us and says: "Well, what can I do, Doctor?" we will make suggestions and we will try to direct him, we will try to imagine facilities. Is that clear again? We will try to imagine facilities that will help him to tackle the problem. So that is what we do. As I say, that problem in the treatment of addiction does not exist in the penitentiary because they are withdrawn. At St. Vincent de Paul we have all the time about 40 to 45 psychiatric cases hospitalized; and may have many more in the out-patient clinic which we also have within the penitentiary.

In the case of some of these men, one of the problems was drug-addiction which even the law did not know about. It was just one other problem they had. I would meet most of those people in the penitentiary, you know, and they would never tell me that they had been taking drugs. However, after they had gained confidence in me I would just ask the straightforward question: "How about drugs?" He would tell me: "Well, I take it sometimes. I was hooked a few times," and

would give me his history. This is part of the total personality.

In other words, there are two phases in the treatment of drug addiction. There is the specific facing of the withdrawal period, and after that there is the more general problem of treating the person.

Mr. MacEwan: Finally, I think you said that treatment facilities in the provinces ranged from nil in most to some in a few? Is that what you said? If I may just read this quickly, Miss Macneill in her evidence, said at page 2:

The ultimate answer to drug abuse rests in social attitudes. If society agrees that drug abuse is a medical-social problem with medical-social solutions legal consequences for abuse must be rejected.

And, then supplementary to that:

Any alternatives to legal sanctions will be expensive initially, many approaches must be tried with clinical research to determine which approach is effective for whom.

Certainly, from what you say, the first move will be very expensive because of the fact that there are very few clinical facilities in this country.

Dr. Cormier: I completely agree with what you say. I am also very pleased that Miss Macneill brought forward this new concept, which we see more and more in the literature, of not speaking only of drug-addiction in reference to specific drugs but of drugs or medication abused as a whole, although certain types of drugs are more specific. It is a question of cost. I doubt very much that we have a businessman here who knows the cost of maintaining penitentiaries, prisons and so on, and who could figure it out, taking into account the social assistance that the family needs and so on. I am of the opinion that, measured in dollars and cents, the approach that we feel is ideal is the most economical one. Do not forget that if a man can succeed in re-integrating into society without having been institutionalized you not only economize in terms of what it costs to maintain him in an institution and to pay for social welfare for the family, but you have also to take into account that the man is productive, in that he earns his living. It would be for an administrator to figure it out, but, offhand, I would say that the scientific and rational approach is somehow always the most economical one.

Mr. MacEwan: Doctor, as you have pointed out, health and drug-addiction are provincial matters. Because this is going to be such a costly thing, could you envisage the federal government not shopping in directly, but contributing financially so as to assist the provinces in this very serious problem?

Dr. Cormier: Yes; I think that the problem cannot be looked at in its entirety if all governments, provincial and central, are not involved. First of all, it cannot be denied that the legal aspect of it is entirely federal. There may be many constitutional aspects that are in question now, but that we have one Criminal Code has, to my knowledge, never been questioned, and I hope it never will be. Therefore, there necessarily must be this dialogue between the provinces and Ottawa.

I hope that every government, including mine, will never forget that we are dealing with human material. We are not dealing here with, say, breaking and entering, which also is entirely illegal, but it must be remembered that that involves property. We are dealing here with human material.

Mr. MacEwan: Thank you.

Mr. Whelan: Mr. Chairman, I came into the meeting late and perhaps this question has already been asked: We read from time to time about violent criminals. How many criminals who commit, say, murder and on "dope"? Do you have any records on that?

Dr. Cormier: Yes. Again, it would be so simple for me to answer this question if I were not working in the field. The relationship between the taking of drugs, or alcohol, or any intoxicating agent, and the commission of crime is not a matter of a pure equation in which you have one set of data that equals another.

For example, it is certainly fortunate that the great majority of alcoholics and drug-users do not commit crimes. This is the basic thing that we have to realize.

What, then, is the difference between the group that takes drugs and commits crime—and fortunately they are few in number—and those who take the same drugs, or drinks, and do not commit crime? This is the basic scientific investigation that we should do.

There are now all sorts of approaches to the study of this problem. Some feel that people

react to alcohol because of certain metabolic disturbances, and so on and so on. For example, the character structure of one drinking person as against that of another drinking person is also a very important determinant. It would be nice propaganda, to get a research grant or something of that sort, to say: Alcohol is another cause of crime", and so on and so on, but I must say that I know criminals who are completely sober when they commit crimes.

• (12:50 p.m.)

Mr. Whelan: I am thinking of the specific case, doctor, of Marcotte, the man who, I think, was called "the Santa Claus killer". At that time some of the press releases said that he was full of "junk", or "dope", or whatever you want to call it. He was at the prison. I think he got a life sentence. Do you know if he was actually on "dope"?

Dr. Cormier: I request the privilege of not answering that question, because being the physician in this penitentiary I cannot discuss this case.

The Chairman: That is perfectly understandable, Mr. Whelan. Have you any further questions, sir?

Mr. Whelan: No. I was just thinking of this particular case and wondering what percentage of people do take "dope" before they commit serious criminal offences. Every now and again we read about this in the newspapers, and I just...

Dr. Cormier: I can answer your question now only in its broadest perspective. We have heard during this meeting that taking drugs, drinking alcohol, or anything like that is only one aspect of the total personality problem. You can have as a fact, that a man drinks and steals—because we have said also that stealing is one aspect in this global personality—but to separate them and say that one is on account of the other is entirely unscientific. Are these two things combined in this individual to make the whole, or how does it act? I will give you my approach to it. From my experience in the penitentiary, if I were to accept, uncritically, all that the men say, such as "Oh doctor, I drank a little bit too much", I would come to the conclusion that 90 per cent of criminality is caused by alcohol, which would be entirely unscientific. Does that answer your question?

These two problems should be studied together, within the one person. Again, fortu-

nately enough, it is a minority of people who drink and steal or are criminal at the same time. Perhaps one way of studying it would be to find out what is the difference between them and the great majority who drink and do not become criminals.

Mr. Whelan: Yes, I think I understand what you mean. I think we even recognize that some politicians are probably at their best when they have partaken of some spirits, and others may be at their worst. We know that certain people use alcohol for other reasons. I have been in public life for a long time. I know that in many instances they need alcohol to give them the thrust or drive that they require. It may be that they are more relaxed, whether they be a criminal, or a lawyer, or a politician, or whatever they may be. My concern is about how much more dangerous they could be if they were on "dope" and committing a crime.

Dr. Cormier: Can I say something off the record here that will not be registered?

The Chairman: This answer will be off the record.

[In Camera]

[Upon Resuming]:

Mr. Otto: My question is related to what Mr. Gilbert was saying, and, indeed, to the whole question of reform in this Bill. You recognize, doctor, as you have said that you will require a vast number of trained personnel to handle this. I was speaking recently to a group of psychiatrists who were under the impression that the pressures of urbanized life in the next 25 years will make such great demands on trained psychiatrists that they will never be able to keep up. My question to you is this: At the present time, in order to qualify as a psychiatrist one must also take the whole course in medicine. From your work in the institution and from your experience, would it be possible to change this whole system and produce people who can treat problems such as this without their having to go through the training in medicine?

Dr. Cormier: I would not only say that it is possible but that it is desirable; and it can be done. I am a psychiatrist and I have spoken as a psychiatrist, but I wish to state very clearly that a psychiatrist is only a man who perhaps has more knowledge and experience of more things in certain fields; but when it comes to the carrying out of the

reatment itself, we have what we call the "personnel auxiliaire". For example, in the hospital it can be the nurse, and in a penal institution, so far as I am concerned, it can be the correctional officer if we consider it a proposition and he has been trained accordingly. Therefore, it is not only desirable, but possible; and it is done. If you elect to see this film, "The Circle", you will see that this home for treatment of the addict has only one professional person attached to it, and that a tremendous amount of work is done.

• (1:00 p.m.)

You have another example in AA. It is not a universal solution for alcoholism, but I must accept that they succeed in doing certain things for certain people, and sometimes get results that we in medicine cannot produce. If, for example, as is claimed, alcoholism is a symptom of a manic-depressive illness, similar to episodic drinking, then AA is not its place. There should be treatment of the underlying illness.

In giving the treatment we must not be paralyzed by the idea that we need so many hundreds of psychiatrists. If you have a certain number of dedicated, well-trained professionals, who know how to surround themselves with all the necessary auxiliary personnel, then you can do a tremendous amount of work.

Mr. Otto: Are these auxiliary personnel of whom you are speaking members of a recognized profession, or are they merely equivalent to nursing assistants? Have they a profession? Can they command respect because of their training, even though they cannot call themselves psychiatrists?

Dr. Cormier: In certain aspects of addiction, or, for that matter, in all the social problems, when it comes to visiting homes to try to help the wife with the budgeting, and all that sort of thing, I can tell you that I do not have the training for that, and my social assistant does that work and does it much better than I could.

Apart from that, I have on my staff psychologists, social workers and even lay people who, under professional direction, sometimes do things a lot better than I could.

Last week I sat in on a session of group therapy for persistent offenders. I mean every word of this. In a group study, where the professional is only one person, a right interpretation, given by one prisoner to another who is ready to receive it, carries a lot more weight than anything I might say.

Secondly, and I mean this sincerely, a right interpretation, on the right help given by a correctional officer to a prisoner who has come to respect him, carries much more weight than anything I could do.

These auxiliary personnel can do that if I am there to guide them on how to create the necessary atmosphere. This, in itself, illustrates that we must not think in terms of thousands of psychiatrists, but of a few who, using the global approach to this problem, can work and form treatment teams.

The Chairman: Thank you very much, doctor.

Mr. Stafford: This is not a question, but a matter for the consideration of the Committee. Further to, and in support of, a conversation with Milton Klein, who is the sponsor of this bill and who is not a member of the Committee, and in view of what Dr. Cormier has said this morning, that a user charged under the Narcotic Control Act, who is accepting and co-operating in treatment, and that such treatment is more effective in society than in prison, I would move, seconded by Mr. Whelan, that this Committee recommend—and I realize it is only a recommendation—that:

Proceedings against any person charged under the Narcotic Control Act who uses narcotics, who is certified by competent medical authority as taking treatment and responding thereto be stayed by the Crown until this Committee makes its report.

The Chairman: We do not have a quorum. I would like to take your motion under advisement. I do not know whether we have reached the stage in the proceedings where members feel that they are competent to make the decision that the motion implies.

If you have no objection, Mr. Stafford, I will reserve it for consideration, so that when it does come up for final decision we will have fairly full representation on the Committee and all members will have had an opportunity to study the evidence. Is that agreeable?

Mr. Stafford: That is fine.

Mr. Otto: Could the motion be put on the record?

The Chairman: Yes; the motion can be recorded in the Minutes. Perhaps the Clerk may have some procedural difficulties with regard to that.

The Clerk informs me that it will be recorded.

Mr. Stafford: I have one other matter, Mr. Chairman, for your consideration and that of the Steering Committee. Possibly Mr. D. Creigen, who is in charge of the pilot treatment unit at Matsqui Drug Institution at Matsqui, British Columbia, could be called as a witness.

The Chairman: I think that is a very good suggestion. I will ask the Clerk to get in touch with him. It will be referred to the Steering Committee, and we will assess whether or not Mr. Creigen will be able to

add materially to the evidence we have already heard. I think we should certainly consider it. With your approval I will leave it at that.

Dr. Cormier, when you had finished I simply said "thank you". I would like to say a great deal more than that. You have been a very informative and very valuable witness. In fact, I cannot remember a witness who has made a greater contribution, and in such an interesting and very human way. Speaking for myself and for the members of the Committee I wish to thank you most sincerely for your presentation here this morning.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 13

THURSDAY, DECEMBER 7, 1967

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

LIBRARY
WITNESS:

Dr. Daniel Craigen, Medical Specialist (Psychiatrist), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (<i>Hamilton</i>	Mr. Pugh,
Mr. Cantin,	<i>South</i>),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	Mr. Mandziuk,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

THURSDAY, December 7, 1967.

(14)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Cameron (*High Park*), Forest, Gilbert, Guay, Howe (*Hamilton South*), McQuaid, Otto, Ryan, Stafford, Wahn and Mr. Whelan (11).

Also present: Mr. Howard, M.P.

In attendance: Dr. Daniel Craigen, Medical Specialist (Psychiatrist), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.

The Chairman referred to the Minutes of the Subcommittee on Agenda and Procedure, which read as follows:

SUBCOMMITTEE ON AGENDA AND PROCEDURE

TUESDAY, December 5, 1967.

(4)

FIRST REPORT

The Subcommittee on Agenda and Procedure of the Standing Committee on Justice and Legal Affairs met at 3.35 p.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Forest and Wahn (3).

Also present: Mr. R. B. Cowan, M.P.

- I Order of Reference dated Wednesday, November 22, 1967—Notice of Motion No. 20.

Members discussed the Notice of Motion with Mr. Cowan. He explained its purpose and his views on how it might be implemented. Mr. Cowan mentioned the names of interested Members of Parliament, related Statutes and official studies of various Parliaments in Canada and overseas, and suggested *Professor Edwards*, Head of the Department of Criminology, University of Toronto, as a possible witness.

The members also noted a letter received from Professor Linden, Osgoode Hall, who offered his assistance in this matter.

Decision—Members agreed to recommend that Mr. Cowan, M.P. should be invited to appear as the first witness, on Tuesday, December 12, 1967. Mr. Cowan will prepare an opening statement for the Committee. Members also agreed that Professors Edwards and Linden should be invited to appear.

II Motion of Mr. Stafford—Thursday, November 30, 1967.

Members discussed Mr. Stafford's proposal, which is as follows:

Mr. Stafford moved, seconded by Mr. Whelan,

That proceedings against any person charged under the Narcotics Control Act who uses narcotics, who is certified by competent medical authority as taking treatment and responding thereto be stayed by the Crown until this Committee makes its report.

Decision—Members agreed that the proposal should not be entertained as a motion at this stage because the hearings are continuing and no decision has yet been taken on the nature of the Report to the House.

III Committee Meeting on Thursday, December 7, 1967 re Bill C-96

Members noted that Mr. D. Craigen has accepted an invitation to appear as a witness and will be here on Thursday, December 7, 1967.

Decision: Members agreed to recommend that Mr. Craigen appear as the next witness.

IV Draft Report to the House—subject-matter of Bill C-115

Members discussed and amended the draft report on this subject. The Clerk was instructed to prepare amended copies for the Main Committee to consider, at an in camera meeting on Thursday, December 14, 1967. It is hoped that a draft report dealing with Bill C-4 will be ready at the same time.

Decision: Members agreed to recommend a meeting of the Committee on Thursday, December 14, 1967, to consider reports to the House on the subject-matter of Bills C-96 and C-4.

V Dr. J. Robertson Unwin, Director of Adolescent Service, Allan Memorial Institute, Montreal.

Decision: Members agreed that Dr. Unwin should be invited to appear as a witness re Bill C-96. Dr. Unwin will be available about the middle of January next.

VI Mr. J. de N. Kennedy—Retired Magistrate, Peterborough

Decision: Mr. Kennedy's letter to Mr. Klein was noted. The Clerk was instructed to inform Mr. Kennedy of the meetings re: Bill C-96 thus far.

The Subcommittee meeting adjourned at 4.40 p.m.

On motion of Mr. Ryan, seconded by Mr. Otto, the First Report of the Subcommittee on Agenda and Procedure was adopted.

On a motion by Mr. Howe (*Hamilton South*), seconded by Mr. Gilbert,

Resolved,—That reasonable living and travelling expenses be paid to Dr. D. Craigen, who has been called to appear before this Committee on December 7, 1967, in the matter of Bill C-96.

The Chairman introduced the witness, Dr. Daniel Craigen, Medical Specialist at the Matsqui Institution in Abbotsford, B.C. Dr. Craigen addressed the Com-

mittee and was questioned by the members concerning his training and experience in relation to the subject-matter of Bill C-96, (*An Act respecting observation and treatment of drug addicts*).

The members agreed that copies of the following documents received from the witness, should be filed as Exhibits (*Exhibits C-96-4 and C-96-5 respectively*):

The Pilot Treatment Unit: The First Seven Month Developmental Program In The Treatment Of The Narcotic Addict

The Pilot Treatment Unit: A Preliminary Report Of Treatment Research—Program II: An Experimental Treatment Program For The Narcotic Addict

(by D. Craigen; D. R. McGregor; B. C. Murphy, Canadian Penitentiary Service, Department of the Solicitor General).

The witness agreed to send a further research report to the Committee for its information, when the report has been completed and published.

The Chairman thanked Dr. Craigen, on behalf of the Committee, for his expert testimony.

The Committee adjourned at 12.30 p.m., until Tuesday, December 12, 1967 at 11.00 a.m., when the Members will consider Notice of Motion No. 20. Mr. Cowan, M.P. will be the witness.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, December 7, 1967.

(11:11 a.m.)

The Chairman: Gentlemen, I see a quorum. Your Subcommittee on Agenda and Procedure met at 3.35 p.m. yesterday and its report reads as follows: (See Minutes of Proceedings)

Could I have a formal motion to approve this report?

Mr. Ryan: I so move.

Mr. Otto: I second the motion.

Motion agreed to.

Mr. Ryan: Mr. Chairman, reference was made to Professor Linden of Osgoode Hall. Is that Professor A. M. Linden and, if so, is he from California?

The Chairman: Yes.

I would like someone to move that reasonable living and travelling expenses be paid to Dr. Craigen who is appearing before the Committee this morning.

Mr. Howe (Hamilton South): I so move.

Mr. Gilbert: I second the motion.

Motion agreed to.

The Chairman: It is now my pleasure to introduce to the Committee Dr. D. Craigen, a medical specialist at the Matsqui Institution of the Canadian Penitentiary Service at Abbotsford, British Columbia. Dr. Craigen comes to us with the blessing of the Solicitor General of Canada. He is highly qualified and I am sure he can supply the Committee with much useful information on the subject of addicts.

Dr. Craigen, will you proceed with your statement.

Dr. Daniel Craigen (Medical Specialist (Psychiatry), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.): Thank you, Mr. Chairman. First of all I would like to thank the Committee for the honour of this invitation and then go on almost immediately to make an apology to the Committee in that owing to a number of circumstances I have been unable to prepare a written brief to read to you this morning. I

opened a new unit on Monday and this occupied most of my time up until my leaving yesterday. I did however send on a copy of two reports that the staff of the pilot treatment unit and I have written. I am afraid they are rather lengthy and garrulous at times but there may be some data in them that will be of eventual interest.

What I think I might do first—and if I am not speaking to the point please interrupt me—is mention what I am actually doing at Matsqui which is, as you know, an institution for the treatment and custody of drug addicts. There are two parts to the institution; a male satellite and a female satellite and in each of these satellites there is what they call a pilot treatment unit. These are intended for the treatment of and research into narcotic addicts. I run both the male and the female units. I have a staff of psychiatric nurses rather than custodial staff. I have a research officer on the institutional staff but he works in very close relationship with me, the theory being that it is from the pilot treatment unit that all the good ideas come.

We are operating a series of seven-month programs. There is nothing magic about the duration of this figure. When we were working it out initially with the parole board and amongst ourselves we felt that this was a reasonable length of time to get to know these people and to decide whether we could in fact let them out of the institution on parole.

The program to date has consisted of daily group therapy in the morning based on a sort of here-and-now attitude rather than a more formal psychiatric interviewing technique where one goes back and studies their childhood and so on. We are more concerned with the deviant behaviour which they exhibit from day to day than we are with what happened to them 15 or 20 years back.

The reason for developing this type of program was that when we were trying to plan a treatment program for the institution we found out there was in fact relatively little known about the treatment of drug addiction and there certainly seemed to be even less known about an effective measure of treat-

ment for drug addiction. The warden and the superintendent and I went down to places like Lexington and the California Rehabilitation Centre to see what they were doing there. We felt the recidivism rate at Lexington was sufficiently high that we did not want to follow their type of program. But the program at the California Rehabilitation Centre in Corona did impress us. It is based to a certain extent on the therapeutic community of Maxwell Jones. Their rate of success, although, again, it is not all that impressive, seemed to be better than most. They have about a five-year program. After the first year about 34 per cent of the people are still on the street, and this drops to about 18 per cent on the street after the second year—that is, people who are still free from drugs. Perhaps you do not find these figures very impressive but in the year and a half that I have been working with drug addicts I think this is quite good.

• (11:20 a.m.)

Mr. Otto: Did you say that 34 per cent were still on the street?

Dr. Craigen: Were still out of prison after the first year.

Mr. Otto: What kind of success do you consider "on the street" means? Does it mean that they are off drugs, or that they just have not been apprehended?

Dr. Craigen: This is something that is very difficult to ascertain. It is the subject of one of our current research projects. I think most people to date have taken failure to return to prison as their criterion of success, but I tend to agree with you that you have to also include those who are using but have not been apprehended.

Mr. Howe (Hamilton South): You say the criterion of success is the fact that they have not returned to jail. For how long a period do you mean?

Dr. Craigen: Most of the statistics from Lexington cover only a two-year period. They say that 34 per cent are still out of jail at the end of the first year after discharge, and that 18 per cent are still out at the end of the second year. They do not go further than that. I think these people should be followed up for a minimum of about five years.

Mr. Howe (Hamilton South): You would consider five years as a minimum length of time to deem it a cure?

Dr. Craigen: To deem it a cure, yes.

In attempting to put this program together we also tried to have a look at the literature on how people felt about the narcotic addiction—what made him an addict? This became and still is, of course, a great puzzle to us. We would find that these people are defective in inter-personal relationships; that they have difficulty in communicating on a genuine and emotional level with people; that they have a low tolerance to stress; that they react to frustration by avoidance, or by pseudo-aggressive activities; and that they have an internalized sense of values that they have developed in the environment from which they came.

I should perhaps stress that the addicts I am dealing with are not professional people or nurses; they are not, on the whole, people who have become accidentally addicted as the result of medical treatment. They are people who, in the great majority of instances, have been delinquent as children who have entered into criminal activities at a relatively early age and who have subsequently become addicts. In a sense, I feel at times that we are dealing with a dual pathology. You have the addiction as the symptom perhaps of an underlying illness, or of a personality disorder, and then perhaps there is a separate pathology for the delinquency and preceding criminality. Therefore in a sense, we have to treat two things: the illness under the addiction and the criminality. We may find that they are one and the same thing; I do not yet know.

I mentioned earlier that we were running a series of seven-month programs. We are currently in our third program, and have therefore discharged two programs to parole. The numbers involved are small and I do not think we can as yet claim any statistical significance from them. In the first group there were only ten people involved and they were discharged in November-December 1966. Of these, two have come back to us on suspension—that is, their parole has been suspended but not revoked—and we have been able to send them back out into civilian life again. Three paroles have been revoked; that is, three of the ten have been returned to jail—which means that seven of them are currently out of jail and in the community.

Mr. McQuaid: May I ask you a question just at this point? Of those ten, would you have any record of how many are people who have family responsibilities?

Dr. Craigen: Do you mean specifically the ones they are married and have children?

Mr. McQuaid: Yes, that they have responsibilities of that nature.

Dr. Craigen: Roughly three in that first group.

Mr. McQuaid: Would you be able to tell us whether any of those three returned?

Dr. Craigen: Yes, one of those returned. It has been my experience that where marriage is concerned an awful lot of these chaps seem to be married to female addicts and have a common law relationship with them rather than to be legally married to a non-addict.

Mr. McQuaid: What I was actually getting at is that it has been suggested that among addicts the stresses and the strains of modern living are some of the things that perhaps contribute a great deal to drug addiction, and that when an addict gets into a prison or some place where this responsibility is more or less lifted from him, he has no desire, or not as much desire anyway, for drugs. Do you go along with that theory?

Dr. Craigen: Yes, I would go along very much with that. I actually feel that prison existence is, in fact, almost a parasitic existence for these people in the sense that almost all responsibility is removed from them. They are no longer in the position where they have to worry about paying the rent or buying their food. All the decisions are made for them to the extreme sometimes; you know, where someone rings a bell and you get up in the morning, and you function by a bell throughout the day. This is one of the things we have tried very hard to get away from a Matsqui Institution. We have tried to push the responsibility for many things back on to the addict himself.

Mr. McQuaid: In other words, your treatment is directed towards that end.

Dr. Craigen: It is directed towards replacing the responsibility on them.

Mr. Howe (Hamilton South): Then this is not a prison in the ordinary sense; rather this is an institution that comes out of people who are incarcerated into prison by a court. Is that how you get in to this institution, by having been given a sentence in a court?

Dr. Craigen: Yes.

Mr. Howe (Hamilton South): In a sense it is a part of a prison but not run in the manner of an ordinary prison.

The Chairman: It is not voluntary.

Dr. Craigen: No, it is certainly not voluntary. I do not think we would have very many patients there if it were run on a voluntary basis.

Mr. Howe (Hamilton South): This still casts the stigma of a police record, or whatever you would call it, on these people who are in this Institution because they are there because they are forced to be there. Therefore, you are not alleviating perhaps one of the main things that needs to be alleviated with an addict and that is the stigma of a police record.

• (11:30 a.m.)

Dr. Craigen: I think this is very important, Mr. Howe, and I could not agree more with anything than the principles expressed in this Bill. Almost with a feeling of reluctance I have to perhaps underline again what I said earlier, that the majority of the people I personally deal with have been in trouble before they became addicts.

Mr. Howe (Hamilton South): In what kind of trouble? With their addiction?

Dr. Craigen: No, prior to that; they have either been on the fringes of the criminal world or they have sentences for things like breaking and entering.

Mr. Howe (Hamilton South): In order to get money to get their drug?

Dr. Craigen: No, in many cases prior to becoming addicts.

Mr. McQuaid: After you have had them as patients for, say, a period of a month, Doctor, do you find that the craving for drugs has disappeared? In other words, if drugs were available to them while they were in your institution, do you think they would take them?

Dr. Craigen: This is something I would very much like to find out. It is something that does sound rather ridiculous. I mentioned earlier that I tend to look on prison as a parasitic existence for these people and I mentioned they are removed from the realities of life to a certain extent. I see heroin as one of the realities of their lives and while they do not have a physical addiction after being in prison for a while I am quite certain the psychic dependency is still there. In my own mind I am pretty certain that if heroin were available, whenever they were under stress they would use it.

Mr. McQuaid: Yes, I agree, when under stress, but what I am trying to determine is whether or not this is actually an addiction or whether it is something that someone takes just because he cannot stand the stress and he takes drugs to relieve the stress.

Dr. Craigen: I think they may start off either for excitement or for the relief of stress but it does become very much an addiction. It is something they have to have whether stress is present or not.

Mr. McQuaid: Well, it cannot start as an addiction.

Dr. Craigen: No; I am saying that it may start from seeking further excitement; it may start because they want to be one of the crowd, one of the addict sub-culture; it may start as a result of stress. It does not start as an addiction, but it becomes one.

The Chairman: Do you want to carry on with your statement, or do you think you could give the Committee more information if we threw it open for them to ask you questions?

Dr. Craigen: This is entirely up to you, Mr. Chairman.

The Chairman: If you have something more to say before we start the questioning I would like you to say it.

Dr. Craigen: I think I probably have just a few points that I would like to make. I mentioned that of the ten who went out seven were still on the street and this pleases me immensely, of course. I wanted to point out that we have since discharged the second group and I do not anticipate that we will repeat the degree of success that we had with this first group.

The second point I want to make is that I was fortunate enough to read on the plane coming up the Minutes of one of your previous meetings, Mr. Chairman, and I noticed, I think it was Dr. Naiman's remarks, about research in the Institution. I would just like to assure the Committee that there is a very active research program going on there and that we do have a full time research officer. In the next month we hope to have a research report available on the data we have compiled so far.

The Chairman: If you would send it to the Clerk of the Committee we would appreciate having it.

Dr. Craigen: Those were the only two points.

Mr. Otto: Dr. Craigen, you said in answer to a question that in the Institution they would probably go after heroin at a time when, within the institution, they are under a certain amount of stress and then you seemed to indicate that the need for heroin is almost directly connected with stress. Could you say that possibly there is one avenue other than just stress? That is, a division between stress as an inability to cope with a problem compared with a desire for some sort of feeling of dominance which is not directly stress but a desire for some other feeling. Has that anything to do with it?

Dr. Craigen: Oh, I would say it very much has. I mean, in the absence of stress they would still use heroin to get what they would regard as the beneficial effects of the drug, the euphoria; the withdrawal, in a sense, from reality. I think I mentioned "under stress" because in institutions at the moment certainly there are penalties attached to the use of heroin and I feel that probably when the drive for the drugs was enhanced by some other factor they would be prepared to risk the penalty they would pay if they were caught using it in the Institution.

Mr. Otto: The experience from an institution—this is not your institution; this is from another experience—indicates that after one year 34 per cent were still on the street and after two years 18 per cent were still on the street.

Dr. Craigen: This is the California Rehabilitation Centre.

Mr. Otto: Projecting that, it would seem to be that after a period of five years you would have very few successes. Is that correct?

Dr. Craigen: This is what worries me about that set of statistics.

Mr. Otto: In line with that and with the experience you have had at your own Institution, presuming that stresses in urban living will become more and more acute rather than less, and presuming also that man is going to find himself more unable to cope with these stresses, what then is the answer to this increase in drug addiction? In other words, if this is going to be one of the indications of the stress, and we do not seem to have any concept of a solution from what you point out as the record, in the next 15, 20 or 25 years, what is the answer to this?

Dr. Craigen: Obviously I do not have the answer for that. I think again it was Dr. Naiman who was emphasizing the need for a

multiplicity of approaches to this problem and I think we have to have this. I feel that the work I am doing in Matsqui is a small part of the picture. The work Dr. Fraser is doing in Toronto is another, but perhaps wider, part. The work Dr. Williams in Vancouver is doing is another part. I think it is going to take a lot of people using a lot of approaches eventually in time to answer your question. On these statistics that I mentioned I think there is another factor that I feel reasonably strongly about; we are in the business of gathering data and assessing at this stage the effectiveness or otherwise of treatment approaches. Perhaps in five years time—

• (11:40 a.m.)

Mr. Otto: Well, Doctor, the reason for my question, and I was trying to illustrate it, is that over the period of the last several centuries or, say, almost a couple of millennia society has recognized that some people will not be able to cope with stress and will take to whisky and we have adjusted to it, and we say, Oh well, he has taken to whisky; that is inevitable. Now Mr. Klein's Bill seems to be directed towards the acceptance of narcotics as a natural progression of that same philosophy society has adopted in connection with alcohol. This is what I am trying to get at in connection with the basis of his Bill. Do you think that, until such time as society is able to cope with the problem of the inability of certain individuals in that society to adjust, narcotics should be put on the same basis as alcohol?

Dr. Craigen: Well, I am very much of the opinion that addiction is a symptom of an underlying illness, just as alcoholism is. On that basis I do not really see how one can call it a crime and thereby punish a fellow for an illness.

Mr. Otto: Thank you.

The Chairman: What solution do you offer?

Dr. Craigen: I do not offer any solution at this stage.

The Chairman: Doctor Howe?

Mr. Howe (Hamilton South): Dr. Craigen, does there seem to be a sort of attitude that this is a hopeless thing and that the small percentage is not worth while saving? Even if it is only the remaining, say, 20 per cent, or 15 per cent, or 10 per cent, these are still human beings, and I would suggest that the

work that you and others are doing to treat these people is well worth while regardless of how small this percentage is; that it must be treated as an illness rather than having punitive measures taken to break it down.

Dr. Craigen: I personally feel that we cannot look for the degree of success that we have in injecting someone with penicillin for the treatment of pneumonia, or something like that. We have to aim for something less than that while we are still collecting data and assessing the treatment efficiency. One can say 34 per cent, or 20 per cent, but I take Dr. Howe's point very well. It is, in fact, people with whom we are dealing.

There is, in particular, one inmate from the first group who comes to mind. I think his total working time prior to entry into our unit was half a day in 28 years, of which he was inordinately proud. He was out working for a year, and he actually wrote to us, told us he was in trouble, and subsequently phoned and asked to come back in.

It is possible with some of these people to develop a genuine doctor-patient relationship even in a custodial setting. What is important, of course, now that he is back in, is that we get him out again and back to work.

Mr. Otto: Is it not, then, a matter of placing our values somewhere? We may have to look at things in a different light. Surely we are going to progress to the extent of realizing that at least this part of so-called crime is illness, and that the work that you and others are doing on their behalf is going eventually to increase this percentage? At least we must look upon it as being something worthwhile, or it would not have been started in the first place.

Therefore what is now perhaps 10 per cent after five years may, 20 years from now, conceivably be 20 per cent and so on, until we eventually come up not with a cure such as a shot of penicillin for an infection but rather a psychological type of cure that we can rely on. In other words, we can face up to this program differently and eventually improve it.

Mr. Craigen: Well, those of us who are working in this field would not stay in it unless we felt that was eventually possible, because, like the addict, I guess, we all have our own levels of frustration.

Mr. Howe (Hamilton South): Would you not say that that is all this Bill is asking for, in principle?

Dr. Craigen: I would agree with that. I would have to add a rider to that. I feel that in dealing with the class of addict with whom I am dealing a certain degree of compulsion is necessary. I do not think that these people, on the whole, would go voluntarily to an outside centre, and even if they went I am almost certain that the majority of them would not stay.

Mr. Howe (Hamilton South): And you can still have compulsion without a stigma?

Dr. Craigen: Yes, in a sense; we have with mental illnesses.

Mr. Howe (Hamilton South): It has taken many centuries to get rid of that stigma, and I often wonder if we really have.

Dr. Craigen: I do not think we are fully rid of it yet. But it is interesting, in a way, that mental illness also passed through a punitive stage.

Mr. Howe (Hamilton South): Oh yes; the chain-them-to-the-wall treatment.

The Chairman: We have Mr. Gilbert and Mr. Ryan.

Mr. Gilbert: Mr. Chairman, for my information I would like to direct a few questions to Dr. Craigen.

You say that you have small groups and that you have a seven-month program with daily therapeutic treatment. Of what do these consist?

Dr. Craigen: What happens in the groups?

Mr. Gilbert: That is right.

Dr. Craigen: I was almost tempted to bring with me a tape of one of the better groups to answer that question. The idea, on the whole, is to look at the individual's devious behavior. Initially, when we start a group, we spend perhaps a month or more trying to get rid of the traditional staff inmate barrier that is present. These people have been used, for lengthy periods of time—10, 15 or 20 years in some cases—to regarding any authority in prison as a punitive authority, as someone who, in a sense, is out to put them down. Before we can undertake an effective treatment relationship with them we have to have this out and discuss the hostility that goes with it, and, quite frequently, put up with hostility.

Once we have done that we then have an opportunity to look at the effect of the devious behaviour of the exhibit on the ward. This can range from minor to major things.

Usually we have to take a minor thing because, as I said earlier, reality is not there in a prison. A man is kept waiting half an hour for his x-ray; he becomes very irritated; he is not going to go near any sort of doctor who keeps him waiting for half an hour. You know that this is a pattern in his life—an avoidance reaction—so you bring this up in the group. You talk to him about it; you relate how this might affect him on the outside. Other equally quick-tempered people in the group relate to him. The idea is to have a group of people projecting his behaviour at him so that he can look at it.

Mr. Gilbert: At the beginning, do you treat these patients with methadone to get them off the drug?

Dr. Craigen: Normally, the patients, or inmates—whatever we call them—prior to coming into the Institution have been withdrawn while awaiting trial. However, since I started sending them out on parole there is the odd one who is addicted and who comes back direct to us and in these cases we use methadone.

Mr. Gilbert: What is your opinion of narcotic clinics for people who have been discharged from prison and who, if treated with methadone, may be able to carry on daily activities?

Dr. Craigen: I think this harks back, in a sense, to what I said earlier about a multiplicity of approaches being necessary. I have recently been voted on to the Board of Directors of the Narcotic Addiction Foundation of British Columbia in Vancouver. They have a maintenance method on projects under way, and I will be very interested in the results of this.

Mr. Gilbert: Are your patients addicts on the hard drugs such as heroin, or have you any on some of the other new drugs?

Dr. Craigen: No; to qualify for admission to the Institution you have to be a heroin-addict.

Mr. Gilbert: You have brought up the interesting point, too, that there seem to be two aspects; one is the addiction, with the underlying mental problem from which the person may be suffering, and the second is the criminal aspect, that the person has been in trouble before, whether it has been as a result of wanting money for drugs or not is

● (11:50 a.m.)

difficult to determine. According to Dr. Cormier very few of these cases come in by the

direct approach of being guilty of possession of a narcotic under the Opium and Narcotic Drug Act. According to him most of them come in by the back door as a result of some other offence that they have committed. There was some discussion last week that perhaps an accused would have to set up a defence of addiction in the very same way he would set up a defence of insanity, and then on a quick test you can determine whether a person is an addict or not. You could then refer him to a treatment centre like yours without proceeding with the criminal offence. What do you think of this approach?

Dr. Craigen: I like it very much. As I understand it, this is roughly the process of civil commitment in the sense that it is used in California. If an addict is taken before a judge on, say, a charge of breaking and entering and it is established that he is an addict, he is sent, as you say, to an institution for treatment, and I gather that the actual charge for breaking and entering, or whatever it is, is held in abeyance in some way until he either successfully completes or fails to complete the course of treatment. At the end of that time he returns to court on that charge.

Mr. Gilbert: That is all, Mr. Chairman.

The Chairman: Mr. Ryan, you are next.

Mr. Ryan: Dr. Craigen, do you find a tendency amongst addicts to group on the outside? Do they get together in small groups of four or five people who have an influence upon one another, which makes it very difficult for you to cure them or their addiction? In other words, they get back into this group and into the same old routine.

Dr. Craigen: Yes. I think association is one of the very great dangers. I think in the cases that have come back to us that this has already been a factor of great importance. I think you will probably find that a lot of these addicts can go out and even manage over a period of time, to put in an 8 hour work day, but they are unable to use their leisure time. When they come to me they have been in prisons so frequently that they are unable to talk to the non-prisoners. I am trying to avoid the use of this word "squarer" as distinct from "rounder", but they are completely lacking in their ability to communicate, they cannot even dance and they do not know how to talk to a normal woman. They are at home with a prostitute.

I feel that in the long term we may have to teach them social skills because the only environment they are currently happy in is their own addict subculture. Apart from the drugs, the actual culture has a great drawing influence on them. They want to go where the action is, as they put it.

Mr. Ryan: In my early days after graduating in law I defended quite a few of these types free of charge. It was the custom in those days to put your name on the jail list. It struck me at the time that a lot of these addicts seemed to be very passive people, although amongst them there might appear someone who was extremely active, a real leader, who was setting the tone as it were for some of these groups. This would not be a type of person who could not stand stress. He seemed to be more a type of person who sought stress, who really got an exhilaration out of a hold-up or doing something to lead the band, as it were. Have you noticed this to any large extent?

Dr. Craigen: In a sense I think this is the attraction of the addict subculture, the game they almost play of getting the drugs, avoiding the police, getting the money for the drugs, the continuous sort of vicious circle of action that they are in. I am not sure as yet, just how important this is but I think it is certainly playing a large part in the relapses that I have had to date. I also understand that some of the Canadian addicts who went over to the U.K., and were supplied with drugs there, have in fact returned to Canada for this very reason. The only place they are happy in is this addict subculture.

Mr. Ryan: They miss the atmosphere of thrill and adventure.

The Chairman: Mr. Otto.

Mr. Otto: Dr. Craigen, I am going to twist things around a little more. The presumption is that the addiction to or the desire for drugs is a mental illness or, in turn, the inability to cope with social stresses is an illness. I am going to put it to you that it is not an illness. It is a normal part of man as an animal. That is, man is not a gregarious creature like the deer, the elk or the duck, but very much like the ape or the monkey and collects in small tribal groups, and therefore his inability to cope with an urbanized and a very highly social structure is not an illness at all but a natural tendency. If that is the case, then I ask what is particularly wrong with alleviating this inability to cope

with social problems by the legal use of drugs or narcotics?

Dr. Craigen: What is wrong with making heroin legally available?

Mr. Otto: What is unacceptable about recognizing the fact that social stress built up in a very highly technical urban society is not the element of man? Consequently, if certain numbers of our people cannot cope with this stress, what is particularly wrong about allowing them to make their adjustment through the organized use of narcotics?

Dr. Craigen: To start off, I think you are making an assumption that is fallacious. You are assuming that these people have attempted to cope with this technical society. The ones I deal with have not. They are not using drugs as a reaction to modern business methods, or anything like that. In my opinion they are using drugs almost as a natural part of their development. They have failed to grow up emotionally. They are immature. The degree of stress that our modern society provides them with is perhaps an easy way of rationalizing their use of drugs, just as it is an easy way of rationalizing the widespread use of barbiturates and tranquilizers. I do not think it is the cause for their drug addiction.

Mr. Otto: You are saying, doctor, that it is their inability to grow up, or their attempt to try to be responsible or to react to the stresses of society. I have put it to you that man as an animal is not that type of creature. By nature he is not a gregarious animal. He is a dominating creature within a very small tribal group, such as a family or a small tribe. Consequently, how can you say that it is not natural for him to act perfectly natural, unless you presume that man is by nature a very gregarious creature and loves lots of company and he is like the bee or the ant, where he is almost born into it. I put it to you that if indeed man is not a gregarious creature, then the difficulty he encounters in adjusting to this urbanized life is a normal difficulty. In fact, those who adjust are abnormal. In this event what is particularly wrong with society recognizing the fact that it is against his nature?

● (12 noon)

Mr. Howe (Hamilton South): Mr. Chairman, may I interject at this point. Would the taking of drugs help to alleviate the situation.

The Chairman: That is the point that Mr. Otto was getting at. He has established his thesis, and now he wants to know...

Mr. Howe (Hamilton South): Well, it is getting so highly philosophical.

Mr. Otto: No, it is not. What is objectionable to society to have these people sort of drop off from the world, or get off the world temporarily until such time as—what is wrong, in your opinion?

Dr. Craigen: In my opinion?

Mr. Otto: In your opinion.

Dr. Craigen: Well in my opinion, I think that if we are going to legalize marijuana and if we are going to legalize heroin, just as we legalized alcohol and we legalized cigarettes, which I smoke, we are going to have an awful lot of people dropping off. I am not speaking for a moment of the side effects of any of these drugs, of the possible abuse or the possible malnutrition or the possible side effects which you know accompany alcoholism too. There has to be a stage somewhere, assuredly, where people have to stay in touch with reality, and not just escape from it. To my mind you are not legalizing heroin; you are legalizing withdrawal from the world.

Mr. Otto: Surely, then, on that same basis, Doctor, you are legalizing withdrawal from the world if you legalize television. There are great numbers of people who are addicted to television because they drop off from the world. As long as society can exist with the productive capacity remaining—and it seems that it certainly can—then I ask you, what is wrong about putting narcotics on the same basis as alcohol and cigarettes and television and beer and everything?

Dr. Craigen: I think you are taking it for granted that if heroin were legally available, the addict would use it sensibly; that he would take perhaps a little in the morning and go out to work. I do not think this is the case. They did some studies on this in Lexington, where they did make heroin available to a number of people, and they started off as we all hope they will when we are advocating legal drugs by using a little and by spacing it out. Within a remarkably short period of time the dose had increased out of all proportion. The drug was supposed to last for a certain time—I forget what it was, a week or a month—and by the middle of the month the fellow had gone through what he had been given.

Mr. Otto: In other words, if he is in a constant dream world, or whatever it is, the greatest harm to society then is that he is completely removed from productive capacity, is that correct? Other than that, is there any other harm that he can do to society? Does he become violent?

Dr. Craigen: No. In my experience, violence is not too often associated with heroin addiction, but I am almost tempted to return the question. We are discussing society; what about our responsibility to the individual? As a doctor I cannot accept this fellow lying there, using heroin and not being in touch with reality any more than I can accept a schizophrenic in a catatonic stupor, or an alcoholic in DT's.

Mr. Otto: Then my answer would be that as soon as you have some feasible, possible potential treatment to this great, vast problem of maladjustment to society, then I think you can put more stress on the illegality of it. Until that time, it is difficult to differentiate between alcohol or any other sedative—cigarettes, narcotics. We are still trying to solve the problem of alcoholism.

Dr. Craigen: Very much so.

Mr. Otto: But we do not necessarily make the taking of alcohol a criminal offence. When the medical profession, when we have alcoholism, I think at that time to continue the taking of alcohol a criminal offence. When the medical profession, when we have it finally been able to solve the problem of alcoholism, I think at that time to continue the taking of alcohol might be considered a little more criminal than it is now. But the question I ask is, why do you differentiate between narcotics and alcohol?

Dr. Craigen: I do not think I differentiate between them.

Mr. Otto: I thought from the tenor of your answer, or your question to me, you said that surely you, as a medical man, cannot have an individual who has left this world, so to speak, with narcotics and be satisfied to allow him to do this. In other words, you have said to me that it is your holding that there is something wrong with the taking of narcotics.

Dr. Craigen: Just as I consider there is something wrong with the excessive use of alcohol.

Mr. Otto: I see. As long as they are both the same.

Dr. Craigen: Very much so. I am sorry if I misled you there.

The Chairman: Mr. Forest.

Mr. Forest: Doctor, this institution of yours in British Columbia which seems to be unique in Canada, is it run by the provincial government, or the Canadian government?

Dr. Craigen: It is run by the federal government.

Mr. Forest: The federal government. Is it the only one?

Dr. Craigen: It is the only one in Canada.

Mr. Forest: Is it a pioneer experiment to determine how to treat drug addicts, to assess its value, to promote or to organize other facilities in Canada the way yours has been done?

Dr. Craigen: It is a pioneer effort, as you describe it. The idea is to aid, treat, and do research into treatment methods. As to its possible duplication or otherwise, I am uncertain; I feel there would only be one other area where such an institution could be built at all, and that is in this province. There are about 3,500 known addicts in Canada; there are about 1,900 of those in British Columbia, and I think the larger part of the remainder is in Ontario.

Mr. Forest: But do you feel that in large cities like Montreal and Toronto, such facilities organized by the federal government should exist?

Dr. Craigen: I feel they should exist, organized by somebody.

Mr. Forest: I understand that at present, outside of British Columbia, addicts are just thrown in jail, while in Vancouver they are sent to your institution. Is that correct?

Dr. Craigen: I believe they have the option of transferring to Matsqui from other parts of the country.

Mr. Forest: From other provinces, too?

Dr. Craigen: I have in my own program several people from Toronto, and I know that some of the ladies from Kingston Prison for Women came down, but I understand this was on a voluntary basis.

Mr. Forest: It was previously suggested here in this Committee that in your institution there is a correctional atmosphere, and that by labelling the individual as a criminal, it is not as useful as it could be. Would you agree with this?

Dr. Craigen: I would like to draw a comparison. I previously worked for a brief period of time, part-time, in another penitentiary, and I was very much struck there by the correctional atmosphere, and I felt that it was a barrier to the treatment of any inmate. I know that in the Matsqui institution a very genuine and continued effort has been made to try to stop this dichotomy between the treatment and the custodial approach. I do not think we are ever going to be 100 per cent successful in that, and I wonder how far we can go. Surely in these circumstances we cannot remove custody completely because these people are sent to us for custody and treatment. Even if you adopt a civil commitment procedure, as they have done in California, you still have to have guards. You can give them another name but that is what they are and that is what the inmate knows them by.

• (12:12 p.m.)

Mr. Forest: Is the same treatment given at Lexington that you give at your place?

The Chairman: Is that a question?

Mr. Forest: Does Lexington follow the same procedure as you?

Dr. Craigen: At the moment they are developing a project which is very similar to ours and we are in correspondence with them on this. There is nothing novel, of course, about the idea of group sites. This idea has been used for many years in a variety of places and for a variety of conditions.

The Chairman: Are there any further questions? Dr. Howe, Mr. Stafford and Mr. Ryan.

Mr. Howe (Hamilton-South): I have decided to proceed along the philosophical line that Mr. Otto started. I thought it was rather interesting. You say that you do not accept a person who is in a catatonic stupor or one who is in a stupor over the use of drugs, and so on. Do you think perhaps we tend to reject these people from society because they are not useful to it, and we presume that we are? They have accomplished something that we have been unable to do, so we have to work for ours.

Dr. Craigen: I think we probably could reject the addict for that reason but I think we reject mental illness, and perhaps addiction and alcoholism, because of our fear of it, because of our ignorance of what causes it, because of our ignorance of how to treat it and perhaps some fear in ourselves that one

day something in us might crack and we might be allied with them.

Mr. Howe (Hamilton South): If we assume that the ultimate goal in life is happiness, then certainly they have achieved it.

Dr. Craigen: I have spoken with them frequently and I certainly do not think they achieve happiness. They might have achieved in the early stages of their addiction a transient euphoria, but once they are addicted they are certainly not happy.

Mr. Howe (Hamilton South): All we have to do is relieve their frustration from one dose to the next. If we provide it, then it is going to be a total state, is it not, and there will not be the frustration so that happiness would be sort of ultimate by these standards. I do not want you to misunderstand but I just cannot accept it. It is proceeding along this same line. What are we going to do, have half of society under the influence of heroin and the other half working to provide it?

Dr. Craigen: I have been trying to—

Mr. Otto: Is it 1984, that sort of thing?

Mr. Howe (Hamilton South): We are now getting into another philosophy.

Dr. Craigen: I have been trying to avoid a question like that because I do not have any factual data or research figures to back it up, but certainly if the aim is to have half of society comatose, or approaching it, or if we want 1984, then let us go ahead and legalize the law.

Mr. Howe (Hamilton South): I am going to change the subject, then, and ask you if you could give us an assessment of the value of these institutions within the penitentiary structure.

Dr. Craigen: The value of an institution such as Matsqui in the penitentiary structure in relation to the penitentiary population in general?

Mr. Howe (Hamilton South): An assessment of how you feel this fits into the penitentiary structure. Is it where it should be? Is it serving the purpose it should serve or should it be elsewhere? How do you assess it in its present position?

• (12:15 p.m.)

Dr. Craigen: Geographically I think it is extremely fortunate. They build a freeway between Vancouver and Abbotsford and I think the more remote you make these insti-

tutions the more difficulty you will have in getting professional staff. I think the only reason we have our present staff is because Vancouver is available.

I think—and I am trying to encourage this at Matsqui—there should be a very close liaison between institutions and the relevant university departments, and I would like to see interns come into the penitentiary service as part of their university course more frequently. I think the penitentiary has an unfortunate public image among professional people and we will not be able to do anything about this unless we can get them to visit as interns.

Mr. Howe (Hamilton South): In a sense that really did not answer my question. Perhaps I did not make it too clear. I did not mean the geographical fitting in, I meant if you thought the type of work that you are doing in the institution that you run fits as such into the penitentiary or should it be separated from it, and I do not mean geographically. I cannot think of the word I want.

Dr. Craigen: Are we getting back to this correctional atmosphere again?

Mr. Howe (Hamilton South): That is right. That is really what I meant.

Dr. Craigen: Perhaps I am over-cautious. I would not like to suggest that we re-organize everything overnight but I would like to see a structure built perhaps half a mile from a penitentiary, where the penitentiary perhaps would still be the parent institution but in this smaller unit we could treat people in a non-correctional setting, a non-custody setting, to see just how much effect the absence of this setting has on their progress.

Mr. Howe (Hamilton South): What is the need for this geographical connection with the penitentiary at all?

Dr. Craigen: I must admit I am perhaps thinking on too small a basis. I am visualizing such things as food services and the necessity for not duplicating administrative staff, and this type of thing. This is the only reason for its nearness.

Mr. Howe (Hamilton South): This being the case, if you wanted to save on truck deliveries of food, and so on, you could possibly associate it with a hospital and accomplish the same thing. In other words, does it have to be part of a penitentiary set-up? Could it not be part of a hospital or some other institutional set-up, a mental hospital,

or something like that, rather than a penitentiary?

Dr. Craigen: I would very much like to see it as part of a mental hospital.

Mr. Howe (Hamilton South): Do you think it would fit better into this type of surrounding than into a penitentiary environment?

Dr. Craigen: I think treatment might well be more effective under such circumstances.

Mr. Howe (Hamilton South): Thank you very much.

The Chairman: Mr. Stafford, you are next, followed by Mr. Ryan and Mr. Whelan.

Mr. Stafford: Dr. Craigen, I have only been here for a few minutes, I had to go elsewhere this morning, but it was at my request that you are present. I should have been here because I do not know what you have covered. When I was out at Matsqui about a year ago, and certain of your officials were good enough to show me all through the institution on a Sunday, I talked to quite a few prisoners or inmates as well. I noticed one thing that was bothering a lot of the prisoners—not only the ones affected—was the fact that several inmates, and especially the ones from British Columbia, had been declared habitual criminals on the application of the Attorney General of that province and this seemed to bother the confidence of many people there. First of all, do you not think it is very important to build up the confidence of the inmates?

Dr. Craigen: Their confidence in what?

Mr. Stafford: That it is very important to build up their self-confidence.

Dr. Craigen: Of course, I think this is important. We have to give them the confidence to go out of prison—

Mr. Stafford: I want to make one point quite clear. I remember when we first went out there the inmates were all watching a show. There was a man in a kilt with bagpipes and there were bands and everything else going on at the time. As I mingled among them I was asked by several people to go and see these inmates who had been declared habitual criminals. It seemed to really bother them. Do you feel you can say anything about whether this should happen or not?

• (12:20 p.m.)

Dr. Craigen: I can speak only for the small group of people I have been dealing with. Of

the 14 involved in the last program about four were habitual criminals and we had three in our control group making a total of seven going out. I think this time we have about nine habitual criminals involved in the program. Of the three who went out from my program one has come back, on suspension, and it would appear that in his case the habitual criminal section of the act was not the deterrent that it is meant to be. Of the other two I think there is an awareness of what they have at stake in failing to keep to the conditions of their parole.

I am in favour of having a degree of control over people after they leave the institution. To put it another way, I would not be in favour of an habitual criminal act that is just going to put somebody in a cell and leave him there forgotten for the next forty years. I am in favour of it only as a means of getting a person into prison for the purpose of treating him and then putting him back into society under parole supervision of decreasing intensity over a number of years, but I feel there should be some provision after, say, five years or whatever period is determined, to remove him from that Act.

Mr. Stafford: A couple of witnesses felt that if prisoners, or any accused, responded effectively they could be better treated outside. Do you agree?

Dr. Craigen: Oh, if they respond effectively, yes, they should be outside.

Mr. Stafford: That is all, thank you.

Mr. Ryan: Doctor, of the addicts you have had in your custody what has been the incidence of attempted violence and actual violence?

Dr. Craigen: There was one instance of sort of minimal violence, and this is the only thing that has occurred in the year and a half that I have been working with them.

Mr. Ryan: Thank you.

The Chairman: Is that all, Mr. Ryan?

Mr. Ryan: Yes, Mr. Chairman.

Mr. Whelan: I just wanted to ask the doctor one question, Mr. Chairman. I asked the witness last week the same question and maybe the doctor does not care to answer either. In your experience dealing with these people who have been taking drugs of some kind what percentage would you say have committed violent crimes?

Dr. Craigen: I am afraid I could not give you a percentage offhand.

Mr. Whelan: Do you think people are more inclined to commit violent crimes if they are on some type of drug?

Dr. Craigen: I do not associate the commission of violent crimes with the use of heroin. I regret I cannot give you statistics to back this up at the moment.

The Chairman: Our previous evidence indicated narcotics addicts are not inclined to be violent types and are more inclined to commit minor crimes to get heroin.

Dr. Craigen: This is of some concern to me because every seven months we are sending a certain number of these people out on parole. While I am interested in them as patients I also feel that I have a certain responsibility to society and I would not like returning those people who were prone to committing violent acts.

The Chairman: Mr. Wahn, have you any questions?

Mr. Wahn: No, Mr. Chairman.

The Chairman: Dr. Craigen, what is your view with regard to the use of methadone on a voluntary patient who goes to a clinic and voluntarily takes this drug on a regular basis of once a day. Do you think such treatment has real merit?

Dr. Craigen: I think the work that Dole and Nyswander are doing in New York would appear to at least indicate the necessity of our looking into this. A project on this as I think I mentioned is currently on the go at the Narcotic Addiction Foundation in Vancouver. I was a little worried about it at first because I did not feel the methods of control were as good as they might be but as they now have a thin layer chromatography lab they should be able to control it.

The Chairman: Do you use methadone at your institution?

Dr. Craigen: For withdrawal only.

The Chairman: But not as a regular daily treatment?

Dr. Craigen: No, we do not use it at all.

The Chairman: So you have not too much experience in the benefits or otherwise that might be derived from that particular drug which is also an addictive drug?

Dr. Craigen: No, I have no personal experience of maintenance methadone.

The Chairman: And is not the type of patient you are dealing with one that would be the least likely to respond to therapy and on?

Dr. Craigen: I would say they are more poorly motivated than the people that attend voluntary out-patient clinics.

The Chairman: And do you agree with the theory that if a person is charged with being in possession of heroin or is an addict the magistrate, instead of sentencing him to a term in jail, should have the option of referring him, if he agrees, to a clinic where he will receive a treatment such as methadone?

Dr. Craigen: Yes. I think the criteria for which type of patient should be put on maintenance methadone are still in the stages of being worked out.

The Chairman: It would be at the discretion of the magistrate. Do you feel it would be a sensible approach to put him on probation while taking treatment and if it worked out satisfactorily then he would not have to return to the magistrate's court for adjudication on the charge of possessing heroin.

Dr. Craigen: From our current knowledge I see that as a very reasonable alternative to sending somebody to prison. I would prefer of course to continue our attempts to try and treat these people to enable them to live a drug-free life.

The Chairman: Would that be along the lines that I suggested or along other lines?

Dr. Craigen: I think there should be different approaches. I think the line you suggest

would work admirably with certain people but for others I think a degree of compulsion in some way would be necessary because I believe they would abuse the methadone.

The Chairman: To your mind, that is the difference between a selected group and a non-selected group.

Dr. Craigen: Yes.

The Chairman: Has anybody else any further questions? If not, before adjourning the meeting I want to thank Dr. Craigen for his attendance here today and for the assistance he has given to the Committee.

Is it agreed that Dr. Craigen's reports on the treatment of patients at the Matsqui Institution in Vancouver be filed as exhibits to today's proceedings.

Some hon. Members: Agreed.

The Chairman: Again, thank you very much, Dr. Craigen. I am sure we all have benefited from your presentation. We certainly appreciate your coming all the way from Vancouver.

● (12:30 p.m.)

Dr. Craigen: Thank you.

The Chairman: The meeting will stand adjourned until Tuesday, December 12 at 11 a.m. at which time we will be considering Mr. Cowan's Notice of Motion No. 20 in respect of compensation to victims of crime. Mr. Cowan will be the witness on that occasion.

The meeting stands adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967

STANDING COMMITTEE

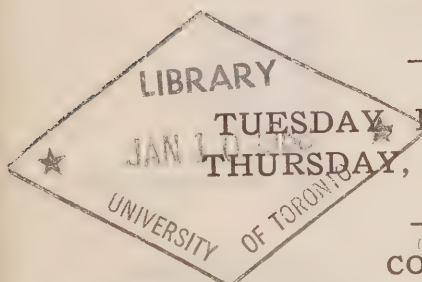
ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 14



TUESDAY, DECEMBER 12, 1967
THURSDAY, DECEMBER 14, 1967

CONCERNING

Notice of Motion No. 20 (Criminal Injuries Compensation Board).
and also

The subject-matter of Bill C-115,
An Act to amend the Criminal Code (Destruction of Criminal Records).

INCLUDING THIRD REPORT TO THE HOUSE
(respecting the subject-matter of Bill C-115)

WITNESS:

Mr. R. B. Cowan, M.P.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1967

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe (<i>Hamilton</i>	Mr. Pugh,
Mr. Cantin,	<i>South</i>),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	Mr. Mandziuk,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

HOUSE OF COMMONS,
WEDNESDAY, November 22, 1967.

Ordered,—That the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions of the following Notice of Motion:

That, in the opinion of this House, the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.—(Notice of Motion No. 20).

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

REPORT TO THE HOUSE

TUESDAY, December 19, 1967

The Standing Committee on Justice and Legal Affairs has the honour to present its

THIRD REPORT

Your Committee had referred to it the subject-matter of Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records). Your Committee also had referred to it the Minutes of Proceedings and the Evidence taken before the Committee during the past Session in relation to an identical Bill (Bill C-192).

In considering the subject-matter of these Bills, your Committee held six formal meetings and heard the following witnesses:

Mr. Donald R. Tolmie, M.P., sponsor of the Bills

Mr. Georges-C. Lachance, M.P.

Mr. A. M. Kirkpatrick, Executive Director

John Howard Society of Ontario

Mr. George Street, Chairman, National Parole Board.

Representing the Ontario Magistrates Association

Senior Magistrate W. J. Tuchtie, Q.C., President

Magistrate L. A. Sherwood, First Vice-President

Magistrate F. C. Hayes, Second Vice-President.

Representing the Canadian Association of Chiefs of Police

Mr. E. A. Spearing, M.B.E., President

Mr. James P. Mackey, Past President

Mr. Arthur G. Cookson, Second Vice-President

Mr. D. N. Cassidy, Secretary-Treasurer

Mr. Walter Boyle, Crime Prevention and Juvenile Delinquency Committee.

Your Committee has given the subject-matter a thorough study and now wishes to make the following recommendation:

Legislation should be enacted incorporating the principle of expunging of criminal records based on the following considerations:

(a) There should be no distinction between infants and adults in any legislation dealing with the expunging of criminal records;

(b) The elapsed time for the erasing of a criminal record should be a period of five years after service of sentence imposed, whether such period commenced before or after the coming into force of this proposed legislation;

(c) The process of expunging the record should be initiated by an application by the applicant to a Board of Convictions Review set up by the Department of Justice;

(d) The expungement of the adjudication of guilt should be made mandatory upon petition of the offender if the Board finds he has not reoffended. Any judgment denying expungement should be made appealable by the applicant;

(e) The statute should reach not only the officially adjudicated case, but cases of arrest-release and cases of acquittal as well. It should extend the order of sealing to all law enforcement and other agency records. Because limited inspection of the records at a later time may be necessary, the statute should provide for sealing rather than destruction of the records. Records so sealed should be required to be removed from the main or master file and kept separately;

(f) The statute should expressly set forth the effects of the order in restoring the civil rights of the redeemed offender, and it should expressly annul the conviction and the offence. In addition to specifying that the person will thereafter be regarded as never having offended, it should provide, to the extent that it is within federal authority to do so, that in all cases of employment, application for licence or other civil privilege, examination as a witness, and the like, the person may be questioned only with respect to arrests or convictions not annulled or expunged. A person might be questioned about his previous criminal conduct only in language such as the following: "Have you ever been convicted of a crime which has not been expunged by a competent authority?"

(g) The statute should provide that the expunged record, upon subsequent conviction, may be reactivated and considered by the Court for the purposes of sentencing or appropriate disposition.

Copies of the Minutes of Proceedings and Evidence relating to Bill C-115 (*Issues Nos. 5 and 14*) and to Bill C-192 in the past Session (*Issues Nos. 30, 31, 32 and 33*) are tabled.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, December 12, 1967
(15)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Forest, Gilbert, Honey, Otto, Stafford, Tolmie and Wahn (10).

Also present: Mr. R. B. Cowan, M.P.

The Chairman read the Order of Reference dated Wednesday, November 22, 1967, which empowered the Committee to consider and report upon the provisions of Notice of Motion No. 20.

The Chairman introduced the witness at today's meeting, Mr. R. B. Cowan, M.P. Mr. Cowan delivered a prepared statement, copies of which were distributed to the members present. The members questioned Mr. Cowan on subjects related to his presentation.

At 11.55 a.m. there being no further questions, the Chairman thanked Mr. Cowan and the Committee adjourned until Thursday, December 14, 1967 at 11.00 a.m.

THURSDAY, December 14, 1967
(16)

The standing Committee on Justice and Legal Affairs met *in camera* at 11.15 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Aiken, Cameron (*High Park*), Cantin, Gilbert, Howe (*Hamilton South*), MacEwan, McQuaid, Tolmie and Wahn (9).

The members considered a draft Report to the House, respecting the subject matter of *Bill C-115, An Act to amend the Criminal Code (Destruction of Criminal Records)*. Certain amendments were agreed to and the report, as amended, was adopted.

It was agreed that the Chairman should present the report as the Third Report of the Standing Committee on Justice and Legal Affairs.

The Committee adjourned at 12.25 p.m., to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, December 12, 1967.

The Chairman: Gentlemen, we have for consideration today Notice of Motion No. 20. The Committee's Order of Reference reads as follows:

Wednesday, November 22, 1967.

Ordered,—That the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions of the following Notice of Motion:

That, in the opinion of this House, the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.

That is attested to by Mr. Fraser, the Clerk of the House of Commons. The sponsor of the Notice of Motion is Mr. R. B. Cowan, M.P., the member for York-Humber. As Mr. Cowan needs no introduction to this Committee, I will call upon him to make his presentation.

Are there sufficient copies of Mr. Cowan's statement to go around?

Mr. R. B. Cowan, M.P., (York-Humber): Yes, Mr. Chairman. Everybody has one.

Mr. Chairman I do not believe that I need to take the time of this Committee to elucidate the Notice of Motion. I believe that all members of the Committee have been in the House on one or more of the five different dates when it has been discussed as shown on the last page of the submission. I do not know that it is necessary for me to read the brief. I think this subject matter is well known to the members of this Committee.

The Chairman: I think it might be advisable for you to read it and then it will be on the record.

Mr. Cowan: All right. On January 20, 1966, I placed a Notice of Motion on the Order Paper of The House of Commons, reading as follows:

That, in the opinion of this House the government should consider the expediency of introducing legislation for the creation of a criminal injuries compensation board to hear the pleas of persons who have suffered permanent injury or disability as the victims of crime and award compensation to such persons or their dependants as would seem fair in the circumstances, and wherever possible to do so, to impose payment of compensation by criminals to those they have injured.

This Notice of Motion was called for discussion on Wednesday, June 8, 1966. It was on the floor of the House for one hour and was talked out, and of course immediately dropped to the bottom of the list. Inasmuch as I believe there is a matter of justice involved in the case of compensation for the innocent victims of criminal acts, I reintroduced this Notice of Motion into this Parliament on May 9, 1967, the day after the Second Session began. It was not called for discussion again until November 22, 1967. Full reports of those hours of discussion are to be found in *Hansard* on pages 6160 to 6168 for June 8, 1966, and pages 4585 to 4593. At the end of the second hour of discussion, the House of Commons unanimously adopted the following motion, moved by the member for Vancouver Quadra, Mr. Deachman, and seconded by the member for Lotbinière, Mr. Choquette:

That the said proposed motion be deemed to have been withdrawn and that the Standing Committee on Justice and Legal Affairs be empowered to consider and report upon the provisions thereof.

This is the reason for this matter being before the Justice and Legal Affairs Committee at this time.

When I spoke on this Notice of Motion on June 8, 1966, I was influenced exclusively in my thinking by the fact that murderers are looked after during their time of trial and imprisonment at the expense of the Canadian government, but nothing is done for the families of the victims of their acts, even though the father or mother of a large family of small children might have been the victim.

As I mentioned on June 8, 1966, I have spent considerable time on various occasions, raising money to be given to the families of the victims of criminal acts. I became provoked during the course of my voluntary actions in soliciting funds on behalf of the little Massey girl who was an attendant in the Sunday School of Victoria Presbyterian Church at the time of her murder. I began to wonder why the good people of Victoria Presbyterian Church and Sunday School in West Toronto should have to solicit funds on behalf of the victim's family, when I knew that the government had already arrested a man in connection with the case, and was feeding him and giving him a bed. Since then he has been committed to an insane asylum where he is maintained at the taxpayers expense, including taxes collected from the mother of this man's victim. Is this right?

It was not until the hon. member for Greenwood, Mr. Andrew Brewin, spoke on June 8, 1966, that I learned that in Great Britain the White Paper on Compensation For Victims of Crimes of Violence was approved by way of Motion on May 5, 1964. Mr. Brewin also pointed out that New Zealand and California had introduced similar legislation, and commented that he agreed that Canadians are entitled to ask for precisely similar legislation to be approved in Canada. Following Mr. Brewin's comments, I had long discussions with Mr. John Gilbert, the member for Broadview. I have secured copies of the legislation. When the law officers of the Crown were preparing this resolution, they said to me: You do not want this resolution prepared simply as though all the victims were murdered. They remarked: We know your heart and we know your mind on this point. If a girl were being attacked by, let me say, an ape, a word synonymous with this type of man, and she cried out, perhaps as a result of having vitriolic acid thrown in her face to blind her, and gentlemen came rushing to her aid while the ape disappeared, that girl might be left blinded for life,

although she had not been murdered. These officers of the Crown said that they had prepared this resolution to cover a case like that, also, where a person has been attacked by a criminal and has suffered permanent injury, the family has suffered damages and compensation should be made available to the family.

Now, of course, the situation is much worse in case where the breadwinner is murdered and a widow may be left with children to look after. What compensation does the State provide?

On April 1, 1967, the Province of Saskatchewan put into force an act to provide for the payment of compensation in respect of persons injured or killed by certain criminal acts or omissions. That Act is known as The Criminal Injuries Compensation Act 1967.

In December, 1966, the Province of Manitoba issued a White Paper entitled "Citizen's Remedies Code", which was presented to the Legislature of Manitoba by Stewart E. McLean, Provincial Secretary. This White Paper commented "There appears a need to alleviate hardship which many crimes of violence are inflicting upon innocent people. The Increase in crimes of violence in recent years has focused attention on this need". The White Paper indicated that an act along these lines might be introduced, but due to a provincial election in Manitoba, no action has yet been taken by the Manitoba Legislature on this matter.

The Province of Ontario Legislature in 1967 passed an Act known as "An Act To Provide Compensation For Injuries Received By Persons Assisting Peace Officers". Under this Ontario Act, where any person is injured or killed by any act or omission of any other person occurring in, or resulting directly from assisting a peace officer, the Law Enforcement Compensation Board may make an order for the payment of compensation.

I understand that on February 28, 1967, the Legislature of the Province of British Columbia introduced an Act known as the British Columbia Crime Casualties Act. It allows the Municipalities in the Province of British Columbia to award compensation to the innocent victims of crime.

• 1120

Reference has been made to the actions taken in four provinces of Canada regarding

compensation to the innocent victims of crime. I would like to point out that in one of the provinces, it is not necessary for the innocent victims to await a court conviction before they may appeal for compensation. In another province, no compensation may be paid to a victim or victims until a conviction has been secured, which may be never, if the assailant is never caught. In a third province, the compensation is payable by municipalities, which may vary in their ability to make compensation, from a very poor mining district, to an ultra-wealthy community incorporated as a tax haven. In a fourth province, compensation is available only to people who have assisted police officers in the performance of their duties.

This variation in compensation available to innocent victims of criminal acts, indicates the absolute necessity of a Canadian statute that would make the award of compensation uniform, in the same manner as The Criminal Code is uniform throughout the Dominion of Canada. The taxpayers of Canada are taxed to keep murderers within prison walls. Why should not the taxpayers of Canada be taxed to compensate the families of the victims of criminal acts? If a Royal Canadian Mounted Policeman is killed, as has occurred in Edmonton, Alberta, and Grande Prairie, Alberta, the taxpayers of Canada pay the compensation available to the widows of such policemen. Why should not the innocent victims of criminal acts be compensated by the Canadian taxpayers, as well as the widows of RCMP officers?

If an argument is advanced that compensation is a provincial matter, I wish to express my belief that no province would object to the federal government making compensation available to their residents from a Canadian tax fund. When there are floods in Italy or earthquakes in Japan, the Canadian taxpayer makes donations to those areas from the Canadian government's revenues. Why should the Canadian taxpayer be allowed to make contributions to foreigners in distress but be told that as Canadian taxpayers, they should not be making compensation to Canadian residents who have suffered from a family disaster?

In addition to the compensation funds that exist in New Zealand and Great Britain, there are similar funds in the State of California and the State of New York. An expert

witness who might be called to testify before this Committee, is Professor J. LL. J. Edwards, Director, Centre of Criminology, University of Toronto. Studies along the lines of compensation to victims are at present being conducted by Osgoode Hall Law School, Toronto, Ontario, and the Law School of Dalhousie University, Halifax, Nova Scotia.

If there should be any feeling that the question of compensation for the innocent victims of criminal acts is one for the provinces and not for the Dominion of Canada, might I point out that criminals convicted under the Criminal Code who are sentenced to two years or more in the penitentiary are maintained at the expense of the Canadian taxpayer. If there is a belief that the provinces should pay compensation towards the innocent victims, might I suggest that the Canadian government pay compensation to the innocent victims if the crime involved calls for a sentence of two years or more. While the provinces might be asked to pay compensation for crimes involving sentences of less than two years, if there should be any province or provinces that would not accept Canadian government payments in the case of all crimes, I believe the Canadian government should pay all the compensation.

I discussed this question in the House of Commons on five occasions. They are reported in full in *Hansard*:

April 5, 1966, pages 3899 to 3902

June 8, 1966, pages 6160 to 6168

Jan. 10, 1967, pages 11649 to 11650

May 19, 1967, pages 434-438

Nov. 22, 1967, pages 4585 to 4593

The Chairman: Thank you very, very much, Mr. Cowan.

Do you wish to enlarge on your statement or are you ready to answer questions?

Mr. Cowan: I will endeavour to answer questions now if there are any.

The Chairman: Mr. Otto is first and then Mr. Tolmie.

Mr. Otto: Mr. Cowan, I have no objection to your resolution. Frankly, I think it is a good idea. However, do you think that the compensation should be paid directly out of a specific fund, or should it be somehow attached as a sort of insurance plan to some other piece of legislation?

Mr. Cowan: In Great Britain, which is the fund I know the best because I spent some time discussing it with the compensation board there, it is just paid out of the general revenues. There is no special fund set aside for it because they do not know what the incidence of criminal acts is going to be.

Mr. Otto: Judging by the figures of the insurance people it would seem, since they are willing to cover such an eventuality very, very cheaply, that the cost would not be too great as far as the Canadian taxpayers are concerned.

My only question is: Are you suggesting the same compensation regardless of the means of the victim's family?

Mr. Cowan: No, not at all.

Mr. Otto: There would be a means test?

Mr. Cowan: No, not a means test. In Great Britain there are many families of victims that do not even apply for compensation. Those who do not apply state that they do not need compensation for financial reasons, or, secondly, they state that they will suffer what they call the injustice that has occurred to them as a family and that they are not asking the state to participate. The number of people in that category is very small, and the law was brought in in England because the great majority of the people required compensation because of the hardship inflicted on them by the injury they had sustained.

Mr. Otto: I have one other question. Have you given any thought to the contributory factor of the victim? In other words, have you given any thought to what would be the situation if the victim had in some way instigated an attack on himself, even though it was accepted that the accused was guilty and was punished?

Mr. Cowan: There has been a tremendous amount of thought given to that in those jurisdictions where such a law now exists. In every one of them there are sections of the law pointing out that if there is an inter-necine crime committed the families cannot collect in any manner, shape or form.

About the amount of compensation, New York State is the best example I can give you. There they have a compensation law that families cannot collect . . .

I suppose this is all being taken down?

The Chairman: Oh, yes.

Everything you are saying is being recorded on tape.

Mr. Cowan: I was going to make a reference and I wondered. In New York State there is a limit of \$15,000 as a maximum payment to the innocent victims of crime. Because of marriages between Ontario and New York City I have some very close relatives in the State of New York. When the State of New York put a limit of \$15,000 on the payment to any one family I was quite interested and I got in touch with the proper officials in Albany, New York. These were not by any means clerks in a division. I asked why they had put this maximum of \$15,000 on and I was told, as everyone who knows New York State knows, that it is roughly divided into two parts—what they call upstate New York, above Westchester, and the City of New York and Long Island.

When the Bill was introduced into the New York State legislature all the members of the assembly voiced approval of it, particularly the upstate New York people; but the great bulk of the membership from Long Island and New York City said "Wait a minute, wait a minute. We cannot go for unlimited compensation such as in some areas where they may make a payment of \$30.00 a week for life to some child. We cannot go for this unlimited compensation".

The high officials in Albany to whom I was speaking said that these assemblymen pointed out that there are two great elements in New York City who unfortunately live in very great poverty. They said, "The poverty in certain parts of New York City is so great, and since this act would allow us to pay compensation to the victims even if the assailant is never caught, we know that in the dire poverty that exists in two great sections of New York City there are relatives who would cut off one another's arms, put out one another's eyes, or cut off their legs if they thought they were going to get what they would call a pension for life," or what you or I would call compensation.

Therefore, the City of New York assemblymen said that the State could be bankrupted by the actions of these two sections of New York City and that they would not support it unless there was a limit on the compensation. So they put a limit of \$15,000 on the compensation on a test period basis; and it is now under test on the basis that they do not

think there will be an increase in serious crime in order to collect \$15,000; but they are checking the applications that come in for compensation. Does that cover your question?

1130

Mr. Otto: Yes, thank you very much. That's all.

Mr. Tolmie: Mr. Cowan, you mentioned the main problem being one of jurisdiction. In other words, evidently the federal government is reluctant to go ahead because there is a question that it might be under provincial jurisdiction. Now, as I understand it, Saskatchewan already has an act.

Mr. Cowan: A wonderful act, too.

Mr. Tolmie: If this is so why could not other provinces have similar acts?

Mr. Cowan: Well, I point out in the brief that of four provinces three have taken definite action and one plans to take action, but they all have different plans. I wish they all had the same act as Saskatchewan because I think it is a very fine act.

But they did not copy Saskatchewan all the way. British Columbia has not copied Saskatchewan holus-bolus; Manitoba does not plan to copy Saskatchewan holus-bolus and Ontario certainly has not followed Saskatchewan holus-bolus.

Mr. Tolmie: Then your point is that you feel it is a very desirable type of legislation and the only way we are going to get it nationally is to have the federal government initiate it.

Mr. Cowan: I think so.

Mr. Tolmie: Now, if this legislation were introduced, would you suggest that it should follow the British system? As I understand it the British system is very flexible. They do not list the types of offences whereas the system in New Zealand specifies certain offences. In your opinion, which would be the most desirable type?

Mr. Cowan: The British system. When I was in Great Britain talking to the men on the Board and the staff, they made the statement to me that in Great Britain it is considered the biggest step forward they have made in social welfare legislation since the turn of the century. I said I thought that unemployment insurance would take prece-

dence over it but they said, no, not necessarily. That is how highly they regard their own compensation fund work.

Mr. Tolmie: You have mentioned that Saskatchewan has a good system.

Mr. Cowan: They have.

Mr. Tolmie: They list their offences.

Mr. Cowan: It is still the best law we have in Canada.

Mr. Tolmie: Yes. It could be improved upon?

Mr. Cowan: Yes.

Mr. Tolmie: Now, as I understand it, none of these systems give compensation for damaged property?

Mr. Cowan: No; just to victims.

Mr. Tolmie: Would you suggest that this type of legislation should be extended to include compensation for property loss?

Mr. Cowan: Well, looking over the Committee, I am a witness and the only man here that is not a lawyer, and I understand property damage is a provincial matter. That is why I do not talk about the property angle.

Mr. Tolmie: Well, if it is possible, do you think that this should be included?

Mr. Cowan: I would be willing to, myself, but I did not want to lose the argument on behalf of the victims by getting involved in one about property.

Mr. Tolmie: You did not want to make it more difficult, in other words.

Mr. Cowan: Quite right.

Mr. Tolmie: What type of agency would administer this compensation? Would it be a compensation board? Would it be a judge?

Mr. Cowan: In Great Britain they have a committee of three or a board of three of which, I believe, two have to be legal men and they have a former judge sitting on the Compensation Board over there. It is one of what you fellows call laymen and two legal men in Great Britain.

Mr. Tolmie: What bothers me, Mr. Cowan, is that Great Britain has a system of this type of compensation. It is a unitary state. Now, the United States is a federal state and

so far they have enacted this type of legislation through the respective individual states.

Mr. Cowan: Just two.

Mr. Tolmie: Yes, California and New York. Do you still think it is feasible, even in a federal state, to enact this type of legislation?

Mr. Cowan: I will be quite frank with you. I admire the Hospital Insurance Act so much, I have said publicly on more than one occasion, and am quite willing to repeat it, that of all the feathers in Paul Martin's cap, there is none that compares with the Hospital Insurance and Diagnostic Services Act which is uniform for the whole ten provinces. If that can be made to operate for the good of the people—and I know it is working for the good of the people—I think this might be modeled on the same type of legislation that made the Hospital Insurance and Diagnostic Services Act feasible in this country.

Mr. Tolmie: Thank you.

The Chairman: Mr. Aiken, then Mr. Cantin and Mr. Honey.

Mr. Aiken: Mr. Cowan, I want to ask a couple of questions—because obviously you have made a study of it—about the collection of funds from convicted criminals. Have you given any thought to the possibility that if a fund is set up a convicted criminal who has the means should be ordered to contribute to it and also the question of having fines go to this compensation fund?

Mr. Cowan: Mr. Chairman, Mr. Aiken has asked me a question but I preface my answer by stating that if you will read one of those *Hansard* references that I make on page four, I expressed my indebtedness to Mr. Aiken for having brought up the sheep.—What is the name of the Act, Gordon?

Mr. Aiken: The Dog Tax and Livestock, and Poultry Protection Act (Ontario).

Mr. Cowan: The Dog Tax and Livestock and Poultry Protection Act (Ontario), where Mr. Aiken pointed out to me, and I told the House, that if a farmer loses a sheep by dogs he can collect from the municipality but if his daughter is murdered, as happened in Dublin, Ontario, some years ago, there is no compensation available to him for that loss.

I might point out that in some of these jurisdictions, particularly in Great Britain, when compensation is awarded to the victim

the criminal action against the criminal proceeds and if an award is made to the victim as a direct result of the judgment that money is paid into the compensation fund. But the victim does not have to wait until such judgment is received, and if no such judgment is made, the victim does not suffer. As for fines I do not know of any one of the four jurisdictions outside of Canada where any mention is made that fines should be contributed to the fund but it is a good idea, I would say.

Mr. Aiken: I would not want to suggest that the collection from the criminal would be in any way related to the compensation paid. I merely want to ask whether you think the compensation fund might be built up or whether, in any of your investigations you found it would be a waste of effort?

Mr. Cowan: No. It is the law in Great Britain and I understand it is also the law in New Zealand that any compensation available from the criminal is put into the fund.

Mr. Aiken: Thank you.

[Translation]

Mr. Cantin: In your brief, Mr. Cowan, ...

[English]

Mr. Cowan: Well, I have told you before that my daughter and son-in-law will not vote for you any more. They have moved out of your riding.

Mr. Cantin: Yes.

[Translation]

In your brief, Mr. Cowan you state that there are only certain states in the United States where there exists a law for compensation to the victims of criminals which means that there is not a federal law.

Do you then believe that the Canadian government should first of all request the consent of the provinces prior to the adoption of such a law?

[English]

Mr. Cowan: I know of no federal legislation in the United States on this point. In fact, I believe the criminal law in the United States is a state matter. I doubt there is any federal law on crime. But so far as Canada is concerned, I have mentioned that I cannot believe any province would refuse to allow its citizens to accept compensation from the federal government under such circumstances as criminal acts. I mean every word of that.

1140

[Translation]

Mr. Cantin: Then, presuming that the federal government seeks the consent of the provinces and that we come to adopt a federal law for compensation to the victims of criminals, would the victims of the automobile be included in this law, provided, obviously, that the accidents are the result of a criminal act?

[English]

Mr. Cowan: Of course, when you get to automobile situations—I have tried to save the Committee's time today—you should take the time to read those *Hansard* references I gave. We had quite a good discussion in Parliament on two occasions, and some members pointed out that in the provinces, if our wife is run over by a motorcar and killed you can sue the owner of the motorcar and collect damages as set out by the courts; and if the man driving the motorcar does not have insurance then they have the Unsatisfied Judgment Fund set up by the Department of Transport.

As the *Toronto Globe and Mail* said in an editorial supporting this idea when it was on the floor of the house, if you are going to lose a loved one in Ontario, be sure to have them run over by a motorcar, because you can collect under the Act in Ontario, rather than have her murdered by a criminal who comes in the window; because if she is murdered in her own home you cannot collect from anybody.

I would say that answers the specific question about automobile damages. This is pretty well covered right now by the laws of the land.

Mr. Stafford: Only for the person who is in the right.

Mr. Cowan: Well, I should hope so. I hope you would not be making allowance for a person who is in the wrong.

Do they not have the same kind of law in Quebec?

The Chairman: Mr. Honey?

Mr. Honey: Thank you, Mr. Chairman.

Mr. Cowan, I want to say immediately that I support and agree wholeheartedly with the principle of your motion, but I have two or three questions that might concern us on the constitutional aspect.

In the latter part of your answers to Mr. Tolmie, you referred to what one might call hospital insurance legislation, which is, as I understand it, federal-provincial legislation administered by the provinces, with the federal authority making substantial contributions. Is this the sort of legislation you envisage arising out of your resolution?

Mr. Cowan: I have set out in the brief that if they are going to argue that point, I would say that if the Dominion of Canada is going to maintain criminals at the taxpayer's expense, such as under sentence of two years or more, then the victims should be compensated by the Canadian taxpayer. If, on the other hand, the criminal is being treated at the provincial taxpayer's expense, such as those that are sent down to Guelph Reformatory in Ontario, then the Ontario Government should pay the compensation to the innocent victims of that criminal's act, if you want to get down to that division of responsibility.

Mr. Honey: I am not sure that I want to get down to it. I am asking for clarification really. It seems to me that you will have problems with this legislation on a strictly federal basis if you do not have the co-operation of the provinces. I may be wrong, but I throw this out just as the basis of my question. I think it would be easier constitutionally and probably politically—and I use that word in a broad sense here—if it were feasible to have federal legislation which was of a permissive type that, in effect, said to the provinces: We think it is a good idea, and if you concur and pass complementary legislation we will pay a certain portion of the debt.

Have you considered this sort of legislation or are you thinking only of a federal act that would be effective across Canada?

Mr. Cowan: Well, if I can get down to a very personal basis, Mr. Honey, Mr. Cameron and I have been friends for something over 35 years, and we are members of the same church, and we have often discussed this question. I attend quite regularly.

Mr. Stafford: So does Mr. Cameron.

Mr. Cowan: In fact, before the Committee met this morning, he asked me what I thought of the sermon last Sunday morning, so you can see that we both attend.

We have discussed this question frequently, and Mr. Cameron, a lawyer, has often

raised this point of provincial and federal jurisdiction. My attitude, as I have often said to Mr. Cameron, is: Heavens above; in our church, Victoria Presbyterian in West Toronto, about thirty years ago there was a policeman by the name of McQuillan who was shot dead in a field which is now the corner of Jane and Bloor Streets in Toronto. His murderer was caught near what is now the Queensbury Hotel. He was tried and after some delay was hanged. That murderer was maintained up to the date of his execution at the federal taxpayers' expense. In the case of other murderers in West Toronto, who have had their sentences commuted to life imprisonment, they are maintained at the federal government's expense.

To refer back to the little Massey girl of whom I make mention in the brief and who was in our Sunday school, the man who murdered her was adjudged insane. What happens to him? He is sentenced to the Penetanguishene Hospital for the Criminally Insane and is maintained at the Province of Ontario taxpayer's expense.

I am not a lawyer, but I must say, on behalf of tens of thousands of people, that it strikes me as a little ridiculous that in the case of the McQuillan murder in our own congregation about 30 years ago—McQuillan being a member of our congregation at the time, and his widow and children remaining there for some time before they moved—the murderer was maintained by the Canadian taxpayer until the date of his execution. In the case of the little Massey girl who attended our Sunday school, her murderer is now being maintained at the Province of Ontario taxpayer's expense at the Penetanguishene Hospital.

I ask you again, you who are lawyers, does it not strike you as somewhat ridiculous to be arguing about the financial responsibility when in such a limited area as our one congregation in West Toronto we have had those two cases, admittedly over a period of 35 years?

The Chairman: Thank you, Mr. Cowan. Are there any other questions? If not, I guess that concludes the meeting, I would, however, like to ask you, Mr. Cowan, if you have any statistics from the United Kingdom about the amount of compensation paid, the amount claimed, and so on?

Mr. Cowan: As you know, quite recently I secured from Britain last year the only annual report that they said was available. I have it here. I will give it to you.

The Chairman: Perhaps we should see some of the figures in a general sort of way.

Mr. Cowan: Do you want to look at the Saskatchewan Act, Don?

Mr. Tolmie: I would not mind. Incidentally, it may be of interest to note that it is not governed by statute. Is that...

Mr. Cowan: I do not know anything about that; that is up to you people.

I have a report from Britain somewhere here.

The Chairman: Since you cannot find it, the Committee will agree to its being filed as an exhibit.

Mr. Cowan: Very well.

•1150

The Chairman: Thank you very much indeed, Mr. Cowan, for your presentation. We have listened to it with a great deal of interest. As Mr. Honey says, and certainly speaking for myself, we are agreed on the principle here. We may have some qualifications on just what is the best way to do it; whether, as Mr. Honey suggested—which, it would seem to me, would be the proper way—it should be through a meeting of the various provincial ministers of justice and working out a scheme something along the lines of the Hospital Insurance and Diagnostic Services Act or the Canada Medicare Act, and so on. There is no question at all about the principle being a sound one and one, I am sure, that this Committee, in making its report, will certainly bear in mind.

Thank you, again, very, very much.

Before I announce the adjournment of this meeting, I want to inform you that we will meet *in camera* on Thursday at 11 o'clock to consider the draft report on the expungement of criminal records. We hope at that time also to have before the Committee the draft report on Bill C-4, An Act concerning reform of the bail system.

There being no further business, the meeting stands adjourned.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament
1967-68

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 15

THURSDAY, JANUARY 25, 1968

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

WITNESSES:

Dr. J. Robertson Unwin, Director, Adolescent Service, Allan Memorial Institute, and Assistant Professor of Psychiatry, Faculty of Medicine, McGill University, Montreal, Quebec.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS
Chairman: Mr. A. J. P. Cameron (*High Park*)
Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe	Mr. Pugh,
Mr. Cantin,	(<i>Hamilton South</i>),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	Mr. McCleave,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

*Replaced Mr. Mandziuk on December 20, 1967.

ORDER OF REFERENCE

HOUSE OF COMMONS,
WEDNESDAY, December 20, 1967.

Ordered,—That the name of Mr. McCleave be substituted for that of Mr. Mandziuk on the Standing Committee on Justice and Legal Affairs.

Attest.

ALISTAIR FRASER,
The Clerk of the House of Commons.

MINUTES OF PROCEEDINGS

THURSDAY, January 25, 1968.

(17)

The Standing Committee on Justice and Legal Affairs met at 11.10 a.m. this day, with the Chairman, Mr. Cameron (*High Park*), presiding.

Members present: Messrs. Aiken, Cameron (*High Park*), Choquette, Forest, Howe (*Hamilton South*), MacEwan, McCleave, Pugh, Stafford, Tolmie and Mr. Wahn (11).

In attendance: Dr. J. Robertson Unwin, Director, Adolescent Service, Allan Memorial Institute, and Assistant Professor of Psychiatry, Faculty of Medicine, McGill University, Montreal, Quebec.

The Committee continued its consideration of the subject-matter of Bill C-96 (*An Act respecting observation and treatment of drug addicts*). The members agreed that the following documents, received by the Committee and pertaining to the subject-matter of Bill C-96, should be filed as Exhibits:

Submission To The Prevost Commission On The Administration Of Justice In Matters Related To Crime And Penology In The Province Of Quebec By The John Howard Society Of Quebec, Incorporated—September 1967 (Exhibit C-96-6)

A Case for Cannabis? (An Article in the British Medical Journal, 29 July 1967, p. 258; and 5 Letters to the Editor on the same subject; 1 on 5 August, 1967, p. 367, 2 on 12 August 1967, p. 435, 2 on 26 August 1967, p. 504) (*Exhibit C-96-7*)

Afternoon of an Addict (An Article in the Waiting Room Digest, September-October 1967, p. 2) (*Exhibit C-96-8*)

Drug Addiction, Psychotic Illness and Brain Stimulation: Effective Treatment and Explanatory Hypothesis (An Article by Peter Roper, M.B., Ch.B., D.P.M., and reprinted from The Canadian Medical Association Journal 95: 1080-1086, November 19, 1966) (*Exhibit C-96-9*)

Brief dated November 5, 1967, submitted by Inmate No. 3941, F. Walch, of the Kingston Penitentiary (*Exhibit C-96-10*)

Letters from the Province of Ontario dated January 5 and January 18, 1968, from the Province of Saskatchewan dated January 15 and January 19, 1968, from the Province of Nova Scotia dated January 15, 1968, and from the Province of Prince Edward Island dated January 12, 1968, concerning the facilities available in these Provinces for the treatment of drug addicts (*Exhibit C-96-11*)

Illicit Drugs Currently In Use Among Canadian Youth (A Review Article by J. Robertson Unwin, M.B., B.S., M.Sc., D.P.M., D.Psycht., C.R.C.P. (C) presented for publication in the Canadian Medical Association Journal, 1968) (*Exhibit C-96-12*)

The Chairman introduced the witness, Dr. J. Robertson Unwin, mentioning his training, his experience and the scientific papers which he has presented or published. Dr. Unwin delivered a prepared statement, copies of which had been distributed to the members. The members questioned Dr. Unwin on subjects related to his presentation.

On a motion by Mr. Forest, seconded by Mr. McCleave,

Resolved,—That reasonable living and travelling expenses be paid to Dr. J. Robertson Unwin, who has been called to appear before this Committee on Thursday, January 25, 1968, in the matter of Bill C-96.

On a motion by Mr. Aiken, seconded by Mr. MacEwan,

Resolved,—That reasonable living and travelling expenses be paid to Professor A. M. Linden, who has been called to appear before this Committee on Tuesday, January 30, 1968, in the matter of Notice of Motion No. 20.

The Chairman thanked Dr. Unwin, on behalf of the Committee, for his expert testimony.

The Committee adjourned at 12.30 p.m., until Tuesday, January 30, 1968 at 11.00 a.m., when the witness will be Professor A. M. Linden, Osgoode Hall, dealing with the subject-matter of Notice of Motion No. 20.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Thursday, January 25, 1968.

1110

The Chairman: If it meets with your approval I think we will start. During the recess we heard from Dr. Roper and retired Judge Kennedy who expressed an interest in appearing before us and we have also received material from both these gentlemen. We received a copy of a brief from an inmate of Kingston Penitentiary, one Mr. F. Walsh, and we have received replies from the attorneys general of Prince Edward Island, Nova Scotia, Ontario and Saskatchewan concerning their program for the treatment of drug addicts.

Dr. Unwin who is our witness this morning has prepared a review dealing with certain drugs which will be published very shortly. It is a copyright article but I think, Dr. Unwin, it will be in order if we file it as an exhibit. It will not be printed in the *Minutes*, but it will be an exhibit, so that anyone wanting to research amongst our papers can find it. Is it agreed that these documents we received be filed as exhibits?

Sone hon. Members: Agreed.

The Chairman: I have great pleasure, gentlemen, first of all in welcoming you back after the Christmas season and the holidays. I am glad to see you all looking so hale and hearty and looking so happy and optimistic.

I have great pleasure in introducing Dr. J. Robertson Unwin, M.B., B.S., M.Sc., D.P.M., D.Psycht. I suppose that is Doctor of Psychology...

Dr. J. Robertson Unwin (Director, Adolescent Service, Allan Memorial Institute, Royal Victoria Hospital, Montreal): Psychiatry.

The Chairman: ...C.R.C.P. (C) who is a director of the Adolescent Service, Allan Memorial Institute, Royal Victoria Hospital at Montreal and Assistant Professor of Psychiatry, Faculty of Medicine, McGill University, Montreal.

Dr. Unwin was born in Australia, where he carried out his basic medical studies and obtained his degrees in medicine and surgery from the University of Queensland in 1956.

His post-doctoral graduate work in psychiatry was conducted in Australia, London, Paris, and at McGill University, where he was Chief Resident at the Allan Memorial Institute in 1962-63. Dr. Unwin, in addition to his medical and surgical degrees, holds diplomas in psychiatry from the Royal College of Physicians and Surgeons of England and from McGill University. He was also awarded a Master of Science in Psychiatry by McGill University in 1965 for his study of fraternity initiations. He holds certification as a Specialist in Psychiatry from the Royal College of Physicians and Surgeons of Canada.

From 1963 to 1967 Dr. Unwin was awarded each year a Research Fellowship from the Canadian Medical Research Council to conduct studies into the problems of teenagers and college students. He has done research in the areas of juvenile delinquency, the stresses to which college students are exposed, and identity problems in college students, and is at present involved in research on the psychoses of adolescents and on the "hippie" movement and the use of drugs by young people.

Dr. Unwin has published papers on a wide variety of topics connected with the problems of youth. He specializes in the psychiatry of adolescents and college students, and is at present the Director of the Adolescent Service of the Allan Memorial Institute of Psychiatry at McGill University and a member of the Psychiatric Attending Staff of the Royal Victoria College. He is also in charge of the teaching of psychiatry to final year medical students at the Allan Memorial Institute. He is Assistant Professor of Psychiatry in the Faculty of Medicine of McGill University.

• 1115

I will not read the brief, but I think you all have his background of training and researching and the many, many articles that he has written.

Without further comment, gentlemen, I have great pleasure in introducing to you Dr. Unwin, our witness this morning.

Dr. Unwin: Thank you, sir. I just might point out I am on the attending psychiatric staff of the Royal Victoria Hospital. The

Royal Victoria College is an institute for young ladies and I have not yet had the privilege of being attached to that college.

Mr. Chairman and gentlemen, I should like to express at the outset my gratitude for the privilege of appearing before your Committee to outline the current problem of drug abuse among young people in Canada.

Before making a very brief statement, I should like to make two comments, first that the opinions I will express are the outcome of clinical work with young people, discussions with various people in contact with youth, and discussions with adolescents and college students themselves, and in no way should my opinion be considered necessarily to represent the beliefs or policies of the Institute, hospital or University with which I am associated.

Second, as stated in my letter of December 1, 1967, to Mr. Cameron, accepting his invitation to appear before this Committee, I cannot be considered an expert on drug addiction, as my experience in this field is quite limited. I am appearing as a professional who has some knowledge of the current use by Canadian youth of what are, in the main, non-addictive but nonetheless undesirable drugs.

As I said, my opening statement will be very brief; I understand that a copy of a professional paper on the topic of drug abuse by youth, written by me and at present in the process of publication by the Canadian Medical Association Journal, has been distributed to the members of this Committee. Though it is rather long, this is the only form in which the problem can be reasonably outlined. I expect that members of the Committee who have had the opportunity to read this paper may want to question me further on it. Though the use by young people of non-addictive drugs may be essentially outside the terms of reference of Bill C-96, I note in the minutes of previous meetings of this Committee that both witnesses and Members of the Committee have frequently expressed concern about the use of a wide variety of drugs by our Canadian youth. Although precise statistics are not available, there can be no doubt that the problem has reached serious proportions and there is no reason at this time to believe that the situation is improving. Even since writing the article for the *Canadian Medicinal Association Journal* I have

become aware of yet another drug fad in several areas of Canada and I think those of you who have been reading the *Montreal Gazette* yesterday and today will be aware of this so-called "Witches' Poison". The current fad is the taking of proprietary preparations containing the drugs stromonium and atropine with consequent delirium, convulsions and allegedly some deaths.

• 1120

Obviously, as drugs such as stromonium are at present legally available from pharmacies without prescription, any approach which focuses purely on the legislative control of non-addictive drugs is unlikely to solve the problem. Young people will continue to experiment with new substances and, judging by the current situation, will continue to have access to even those drugs which are controlled. The only realistic approach in my opinion is to regard drug abuse by young people as a symptom of a wider social and personal problem and to instigate programs of research, education and therapy for young people and their families. These young people, this age group, already represent close to 50 per cent of the North American population.

The Chairman: Thank you very much, Dr. unwin. Is that your statement? Do you wish to answer questions now or do you want to say something further?

Dr. Unwin: No, I think based on my paper plus this statement I would be happy to answer questions now.

The Chairman: Is anyone ready with a question? I guess all members have not read that article yet.

Dr. Unwin: I do not blame them.

The Chairman: Mr. Pugh?

Mr. Pugh: I might start off with just a few normal things. We have had a good deal of evidence that drug addiction of one sort or another is a form of sickness. Do you agree with that as a straight statement?

Dr. Unwin: Yes, I do.

Mr. Pugh: We have had witnesses here who have gone so far as to say that smoking cigarettes or even drinking coffee regularly every day is sort of an addiction in itself.

Dr. Unwin: I prefer the term "dependency" which the World Health Organization has recommended.

Mr. Pugh: What is the difference between "addiction" and "dependency"?

Dr. Unwin: None essentially because the term "addiction" had become so widely misused. Also because it has a value judgment attached to it now the World Health Organization and the United Nations have recommended that the term be dropped and the more precise term "dependency" be substituted in its place.

Mr. Pugh: As against "addiction". In other words an addiction is something within a person's self and is extremely hard to fight?

Dr. Unwin: Yes, so is dependency.

Mr. Pugh: You stated that you are not here really on drug addiction but more as an expert with views on certain habits of youth. In your research and in regard to addiction itself—I mean addiction not with regard to youth and I do not mean "dependency"—in your knowledge has there been an attempt to cure this treating it as a sickness? Les us say of a person that is in prison. Our previous witnesses have said: Well no, they do not really go after the cure, they merely toss them in the can, keep them there and at the end, when they are let loose, the first thing they do is try to get some more of these heavy drugs.

Dr. Unwin: Mr. Pugh, as you commented, I am certainly not an expert and not experienced in this field at all widely and people like Dr. Cormier and others who have spoken here are much more qualified and, I think, have commented on this. It is my strong impression that on the whole people do not receive treatment for drug addiction when they enter prisons. I know of only one or two institutes in Canada that are set up to handle this as a therapeutic and rehabilitative problem rather than purely a punitive incarceration problem.

Mr. Pugh: Then, as a person who has considerable knowledge and background on the whole situation as it exists in drug addiction on down, would you say that this is something that we should aim for? In other words, curative measures to start off within prison or some other form outside of prison?

• 1125

Dr. Unwin: Yes, I am entirely in sympathy with the intentions of the present bill.

Mr. Pugh: Do you feel that the British experiment of having a drug sentence is a good idea?

Dr. Unwin: Once again I feel that you are questioning me on an area that I am not at all qualified to discuss. The impression I get from reports is that the British are quite unhappy about their system and are reviewing it.

Mr. Pugh: I have one final question. You use the term mainly in Canadian youth non-addicted—their use of non-addictive drugs. In your opinion, as a psychiatrist and with all the other background you have, is there a tendency through the use of non-addictive drugs to graduate to drugs of a more serious nature?

Dr. Unwin: No, there is no evidence of this at all at present, sir: of a marked tendency to go from non-addictive to addictive drugs.

Mr. Pugh: Then you feel that perhaps the best cure for the whole thing is something in the nature of education right on down through the line?

Dr. Unwin: Partly education. I would stress the importance of research now because we just do not have facts about the extent of the problem. We do not have facts about the eventual outcome for young people who take these drugs on anything more than an experimental basis and we must have research on this. There is a certain amount of public hysteria about the whole matter right now as I am sure you are aware. And you are getting people making extreme statements pro and con about the dangers, the lack of dangers, the desirability of legalizing certain drugs, the undesirability of legalizing certain drugs and so on. We do not have hard facts. We have clinical impressions but there are almost no studies going on the long-term effects of a lot of these drugs, particularly, of course, I am talking about marijuana.

Mr. Pugh: There is a question of expense involved in the setting up of any form of research. In your opinion would the expense be justified? Is it necessary that we go ahead?

Dr. Unwin: Yes, I think so, Mr. Pugh and not just from the point of view of therapy of young people who may need it. You see, what we have to be aware of is that this population we are dealing with, the youth population, as I have said, is already up to 50 per cent of the North American population. Like it or not, some of these young people are the potential leaders of tomorrow and studies indicate that positions in the executive branches of various organizations and leadership

in general are being passed more and more to younger people. There have been studies which show that as the years progress the number of people in the executive age group is going to drop from the current executive age group which tends to be in the mid to late 40's and that people are going to have to draw more and more for leadership on younger people. Therefore it is not only a matter of treating these young people with individual problems. It is a matter of having some foresight about the future of society and the needs of society. This is a protective thing for society, not just for the young people themselves as individual psychiatric or medical cases.

The Chairman: Thank you. Mr. Aiken.

Mr. Aiken: Mr. Chairman, my first question is very much along the lines of Mr. Pugh's last one but I would like to ask this. Bearing in mind that other generations have had other distractions and escapes—I refer particularly to military service and so on—do you feel alarm at the drug fads that are developing such as glue sniffing, nutmeg and various other things that have been mentioned in the paper? Do you feel alarmed that the number of these is out of proportion to what a young generation seeking some escape is normally expected to undertake?

• 1130

Dr. Unwin: Yes, sir, I feel considerable alarm for several reasons.

You talk about the various fads or thrills which users always sought and always will seek. In the early days of concern about the current epidemic of drug use by young people, it was predicted that this was no more than a passing fad like goldfish swallowing. Goldfish swallowing led, perhaps, to nothing more than the risk of choking yourself. It did not lead to the risk of getting associated with a particular drug cult, of interfering with your education, with your decision making and so on.

The point is, as I have stated in my paper, that I do not believe and I do not think any doctor would believe that any young person, up to a certain age where we think they have reached reasonable maturity, should have free access to any intoxicants whatever. The younger adolescent, as you know, is going through a stage of very critical development in terms of development of social awareness, social responsibility, judgment, intellect and

so on and any intoxicating drugs, if they are used frequently, are bound to interfere with this development, with dire results to the youth, to his family and, of course, eventually to society itself.

Although we do not have precise statistics on the extent to which drugs are being used by young people, I hear enough about it and see enough of it to be quite concerned.

Mr. Aiken: Is there really anything that could be done legislatively on these improper uses of normal substances that have to be circulated for normal use? Is there any way that legislatively we can cover that at all?

Dr. Unwin: I think so, sir. First of all, a lot of these drugs—like this current fad of using stramonium and so on—should not be freely accessible where any young person or anybody can walk into a pharmacy and buy anything up to five or ten cans of the stuff and then ingest it. It is meant to be burnt and inhaled for asthma but these kids are taking it by the teaspoonful.

Certainly I think Parliament can legislate control of these drugs but if it stops there I think it is just joining in a paper chase because, of course, by the time you people perhaps get around to controlling the distribution of, let us say, stramonium, these kids have found something else and off you will go again.

I understand that already there is something before Parliament concerning the control of glue. This is an old, old fad among younger teenagers so if we...

Mr. Pugh: We just go stuck with it.

Dr. Unwin: The next thing will come, and the next thing and the kids on the whole, I think, will just keep ahead of us. When you have one thing tied up they will say: Right now we will have a go at this one. And this will go on and on. We have to get ahead of this and think in terms of prevention and this is where research and education and therapy of the kids and their parents, of course, and society must come in, I think. And I think legislators certainly can do something about that. As one member of the Committee said in an earlier meeting, you cannot legislate morality and if that is all we try to do I do not think we are going to get far. I think we might have learned from prohibition some lessons about that.

Mr. Aiken: Thank you.

The Chairman: Are you through, Mr. Aiken?

Mr. Aiken: Yes, I am, thank you.

The Chairman: Mr. Wahn?

Mr. Wahn: My questions have been answered; thank you, Mr. Chairman.

The Chairman: Mr. MacEwan?

Mr. MacEwan: Doctor, I think most of the pertinent questions have been asked. You said in this regard that not too much by way of educational programs is being carried out. What body would you suggest should actually undertake this most necessary education in this important matter?

Dr. Unwin: I think it has to be taken down at the community level and I think the education should come about through a team approach where there would be medical people involved, legal people, people from the law enforcement agencies and ideally, perhaps some of the young people themselves who have been in on this so-called drug scene, have now got a perspective on it and have come out of it again and can talk fairly matter-of-factly and from experience to youth itself.

Now, of course, society, including parents also have to be informed but I am quite sure the majority of parents already know that drug usage by young people is undesirable and that they let their children know this. The young people themselves, unfortunately, nowadays are exposed to such a barrage of propaganda about drugs, often very one-sided, often coloured with a highly sensationalistic tinge by the communications media and often presented in such a way that it seems highly desirable and almost a personal responsibility to try some of these drugs.

• 1135

This happened with LSD and it was quite some time before the voices of the medical and legal people started to come up and say: Now, look, there are dangers in this drug. It has been presented to young people as being soul expanding, mind developing and increasing creativity. We had better watch it.

There are very strong dangers and by the time these contrary viewpoints came up the young people had had such a barrage of propaganda about the alleged benefits that they just thought that doctors were being spoilsports who wanted to spoil their fun.

Mr. MacEwan: Your suggestion is that a team should be set up. Who should undertake the organization of these teams throughout the country, and so on?

Dr. Unwin: Concerning young people still in high school, it could be the responsibility of the various school boards and the home and school associations—the parents—to get teams going between them. I understand this has already happened in certain areas of Canada and I know that meetings are beginning now in Montreal to assess the extent of the problem and the advisability of setting up these educational panels.

Now, there is some controversy about this and some people still say that the last thing we should do is to tell young people about these drugs. They are frightened, allegedly, that if you tell the young people about the drugs they will only become curious. I cannot accept this viewpoint because the young people already know about the drugs and they are already getting more than adequate exposure to a certain type of information through the mass media and we have to counteract this and, hopefully, get in ahead of time.

Unfortunately, I have the feeling that in some areas people are so stunned by the alleged extent of the problem and the complexity of it that they would prefer to pretend it did not exist and just hide it all under the mat. One gets this impression when one hears that certain areas or certain communities are forbidding public discussion of drugs among youth or where, when the medical and legal authorities know that there is a definite problem of drug usage in a particular area, nevertheless public statements will be made by authorities denying this.

Mr. MacEwan: You say right now it stems from the school board or the municipal level. Do you think the provincial government should take a more active part in such programs?

Dr. Unwin: Yes, I think so in terms of encouraging the setting up of these educational panels and, if necessary of course, making facilities, including financial facilities, available.

Mr. MacEwan: In your activities with youth—this is my final question—what type of activities do you carry out? Do you lecture to them or meet with them? What is your normal program in dealing with this matter?

Dr. Unwin: At present, or up until recently, it was primarily seminar type discussion groups with various segments of youth, on invitation. First of all, the "hippie" movement itself invited me to talk when this particular drug called STP arrived in Canada last year because they were frightened of the consequences of the drug and also of using some of the known antidotes for other things. Then there are requests to speak to high school audiences, college audiences, to parents and so on and, as much as possible, one undertakes these speeches along with other doctors who are knowledgeable in this area and have had some experience with it.

Then, of course, there is also the level of therapy where young people are referred to our clinic for treatment for the effects of these drugs or for conditions associated with the drugs.

Mr. MacEwan: Is the clinic a private clinic?

Dr. Unwin: No, sir; it is part of the Department of Psychiatry of the Royal Victoria Hospital in Montreal.

Mr. MacEwan: Does the provincial government contribute to it?

Dr. Unwin: Yes.

Mr. MacEwan: They do? Thank you.

• 1140

Mr. Tolmie: Doctor, you alluded to a point that I am interested in and that is the question of publicity concerning some of these hallucinatory drugs. For example, any new drug that is discovered immediately becomes the subject of discussion, it becomes the subject of articles and newspapers in the mass media. They reveal the way to take these drugs in detail, and perhaps in some cases, the good effects of these drugs.

Now if we are trying to stop the spread of these drugs among our teenagers, do you think that this type of reporting renders a disservice, and if it does, is there any way to counteract it?

Dr. Unwin: I think it does a distinct disservice. But whether it can be counteracted, I am not certain because you are obviously going to run into the problem of freedom of the press and so on, and this has already come up with some of the hippy underground papers. I think the only realistic approach might be that the communications media

could be asked as much as possible to be as non-sensationalistic as possible, to be more concerned about giving the facts rather than being concerned about the impact that a given report may have on the readers, in terms of exciting them and drawing their attention and so on. And also, that the communications media might be encouraged to try and always give the other side of the story if a particular piece of reporting tends to highlight alleged advantages or alleged benefits from a drug.

Mr. Pugh: Getting their information from whom?

Dr. Unwin: For the balanced side of it; the other side of it. From professional people who have knowledge of these drugs, whether it be the researchers working with the drugs, people working clinically with them, people who are seeing the side effects of them, and so on.

Mr. Howe (Hamilton South): Perhaps, doctor, rather than rely upon the newspaper media to objectively report the pros and cons, let us say, of certain drugs, would it not be incumbent upon organizations such as the ones you belong to, to take the initiative and try to present the other side of the picture.

Dr. Unwin: This is my personal belief. What you do run into, of course, is the traditional reluctance of the medical profession to be involved with any type of prolonged or prominent publicity, and this is something that is quite difficult to avoid. I have had personal experience with this. I think it is very much a responsibility of the medical profession, and associate professions nowadays to make facts known, particularly in areas like drug abuse, where distorted pictures are being given which may be encouraging young people to try these drugs or to escape into them.

But as I say, one cannot always rely on the complete exactness of the reports that are finally published. I have had some unpleasant experience about this myself, where I was quoted as giving certain figures which I did not give, but the figures were quoted in a paper and caused quite a sensation. This always reflects badly on a professional person, of course. It looks as if you were joining in this sensationalism itself when, in fact, you are trying to avoid this.

Mr. Howe (Hamilton South): Mr. Chairman, I apologize for coming late but we had another Committee meeting first, so I hope I do not

more you with repetition. For the sake of clarifying terminology, you have been using the word "drugs" and yet as I read your brief, you refer to products that are definitely not drugs, am I correct?

Dr. Unwin: I am using drugs, doctor, in the very wide sense of products which have a physiological effect on the human body and are usually used in medical practice.

Mr. Howe (Hamilton South): Oh, I see. I mean airplane glue is not a drug, or it was never put out as such, therefore I wanted to widen the term just so we could talk more freely.

If these substances, for the sake of another word, are not made freely accessible such as they are now, number one, would it not lead to people finding something else. In other words, it seems that any volatile liquid would fit into this class, therefore if you remove one people are going to get another, which they have been doing. They have been getting another one even without removing the previous one.

Dr. Unwin: Exactly; this is why I feel that any approach which focuses solely on restricting the legal access to these drugs is not going to work.

Mr. Howe (Hamilton South): Legislation is too far behind—the danger has come and gone before it is legislated and then we are into something else, and we have to start and legislate this. You are into a chain reaction that is way behind what is going on.

Dr. Unwin: Exactly; that is correct.

Mr. Howe (Hamilton South): Some of these things are so readily available in household products that the danger is imminent so you cannot legislate. This is not a legislative problem in a sense, is it?

• 1145

Dr. Unwin: I think they have to be legislated to a certain extent to get some degree of control and also to provide penalties, which might discourage some people from being irresponsible. But, of course, as we know, even the substances which are now under control nevertheless do end up in the hands of people who have no business having possession of them or using them.

Mr. Howe (Hamilton South): There is another thing and possibly the question is a little bit philosophical but we tend to use the

word "teenagers". You have used the term, and everybody here today has used the term. Do you not think possibly that we are wrong in using the word "teenagers", when we put them into a class that makes them feel they have to do something that all the rest do. We do not class them according to their intellect; we do not class them according to their size; we do not class them according to their education or the amount of money we have; we class them according to their age and call them "teenagers". Therefore, if they are teenagers they have to rebel, and they have to do something like this. Do you not think, in part, that we as adults have been responsible for some of the things that have gone on?

Dr. Unwin: I think even much more than you imply, doctor. I feel, personally, that a good deal of youth unrest nowadays is, to a certain extent—of course it is very complex, but to a certain extent, one of the factors at any rate—unwitting encouragement by the adult population towards this sort of disturbed or disturbing behavior.

Mr. Howe (Hamilton South): In other words we are creating the disturbance many times by our authoritative attitude. Perhaps some of these younger groups of citizens are quite right in their rebellion against us.

Not in this way, do not misunderstand me—I do not mean with regard to drugs but this is just one of the forms of rebellion that they have created, because we put them in the position to do so.

Dr. Unwin: Yes, this has gone on since the beginning of time, of course. If you read right back to Socrates and Hippocrates and these people, some of the statements they made about youth in the Golden Age of Greece, you could apply it exactly to youth nowadays; the same lamentations about the looseness of morals, the disrespect for their elders, lack of concern for tradition and so on.

Mr. Howe (Hamilton South): We did not do it that way when I was that age.

Dr. Unwin: You did not.

Mr. Howe (Hamilton South): No, I am saying this as a quote.

Dr. Unwin: Well, there is always the sanctimonious approach.

Mr. Howe (Hamilton South): We tend to say this. We tend to tell them, "Well, I did

not do that when I was that age," and you know damn well if you had had the opportunity you would have.

Dr. Unwin: Yes, I could not agree more.

Mr. Howe (Hamilton South): Do you not think we are going through a transitional stage now with this group, where we are breaking away from some of the mid-Victorian moralistic ideas, and getting into something that is a little bit more progressive and we are wrong, and they are wrong. This is not a one-sided blame, is it?

Dr. Unwin: No, I feel very strongly that a lot of the background to what is going on now is related to this period of transition we are in now. This period of rapid and continual transition, where it is very hard for the adult society, that is supposed to set the tenure of morals and ethics to keep up.

Mr. Howe (Hamilton South): Or even accept.

Dr. Unwin: Yes, and the teenagers are sensing this confusion in the parents and are therefore getting badly confused themselves. I know it has always been a phenomenon of youth to rebel. I think it is also a necessary developmental stage for youth and for society. You have to have the young Turks coming along and challenging hoary traditions and helping the total society check on traditions and long held values, to see if they are still viable, to see if they are still necessary. Hopefully this will be done in such a balanced way, that society will come to a consensus and advance where necessary and stand pat where necessary. There must be some principles of human behavior and relationships and ethics which remain pretty immutable since the beginning of time, and these must be held on to. I am more concerned nowadays, frankly, despite and because I am naturally very pro-youth by the nature of my work; I am concerned that the adult society is backing down too much or dodging responsibility for limit setting and disciplining. I think this has quite a lot to do with at least some of the disturbance in youth nowadays; that the youth are more or less given the impression that adults do not know or do not care, so just work it out for yourself.

Mr. Howe (Hamilton South): And do not know how.

Dr. Unwin: Yes.

Mr. McCleave: The adults are helping to cut the umbilical cord.

Dr. Unwin: It is a mutual process, sir, but think the adults are being a little hasty and a little irresponsible sometimes in being too willing to get rid of this terrible load which is a demanding and questioning teenager.

Mr. Howe (Hamilton South): I have just one more question and I am sure it will be easy. I gather from the trend of what you have said since I came in that you suggest that education is the answer. Where are you going to start to educate who and in what way?

• 1150

Dr. Unwin: Education, in the broader sense of course, has to involve primarily the family, I think, and encouraging parents to have some confidence in themselves and in their ability to handle and guide through sensible limits and sensible affection the young person as he is growing as much as any organic growing thing has to be guided, protected, have limits put on it, but also be given the necessary impetus toward growth.

Mr. Howe (Hamilton South): I agree, but it should not be a one-sided education, that is what I mean.

Dr. Unwin: No. I mean education in the broader sense. I just do not mean education in the sense of telling young people not to take drugs or why they should not take it. It is a much broader issue. The more we focus on drugs per se the more we are going to get into this paper chase you talked about, of just trying to catch up with them.

Mr. Howe (Hamilton South): You are just trying to educate an end result rather than educate the cause.

Dr. Unwin: Yes, you are treating a symptom rather than the illness itself.

Mr. Howe (Hamilton South): Yes, that is right. Thank you very much.

Mr. Aiken: May I ask a supplementary question?

The Chairman: Yes, Mr. Aiken.

Mr. Aiken: There has been some mention of teenagers, could you give us some idea of what the relative use of drugs is as between youth and young adults?

Dr. Unwin: I cannot give you anything like an accurate answer to that, sir, because we just do not know. You can appreciate the difficulties in getting this sort of material. I think the figures that are quoted are no more or no less reliable than, perhaps, a survey of virginity among college sophomores. Some people will claim to have done things because it is a "done thing" while others will deny it for fear of detection.

Mr. Aiken: I have been thinking, particularly, of your contact with young people. Is there more use of drugs among teenagers than there is among young adults?

Dr. Unwin: It extends into young adulthood, talking of the college population which goes up to 23, graduate school up to 25 perhaps. It extends right through and it is the pattern that tends to differ. The younger kids down around 13 or 14 tend to use things like glue, cough medicines, this "witches' poison" they are talking about. These are things that they can get easily because they are not in the milieu or in the circles where the other drugs that are getting more publicity, like LSD, marijuana, or STP or what have you, are available although more and more young people in high schools are getting access to marijuana and I have certainly heard of and seen young people around 13, 14 or 15 who have been using marijuana.

Mr. Aiken: Would you say that in general, it stops when they start going out to earn a living?

Dr. Unwin: I do not know if we know that, sir, because this has not been going on long enough to even get a clinical impression. Of course, you know, if you stay in your office and wait to see the young people who are going to come to you with drug problems you are going to get a very distorted picture of the total distribution of this because the fact is that the majority of young people will not come near a doctor if they can avoid it for the various reasons I have outlined in the paper.

First of all, they are scared of detection. Secondly, particularly if you move on to the hippie crowd or the people who have this hippie philosophy, they regard physicians as being the prototype of middle-class society against which they are in revolt and they just will not have anything to do with you. Thirdly, within the drug cults or the drug milieu itself a lot of the antidotes are available already.

The young pushers, the young distributors and the young people themselves can get the various medications which they know from reading the medical literature and they know the medical literature enormously well. It is embarrassing to talk to them sometimes. They have the antidotes available. My first contact with the hippie community was when some of them called me to say that they were frightened because there was this new drug STP in town and they did not know the antidote. They knew that if they used the same antidote as they used for LSD they might kill somebody so they wanted to know what were they going to do. This is how I first came in contact with them.

Mr. Pugh: What did they want the antidotes for?

Dr. Unwin: If they have what is called a bad "trip", sir; if they are not enjoying the results of the drug too much and they want to stop it.

• 1155

Mr. Pugh: Would they in the course of enjoying or not enjoying this "trip" have the chance to take an antidote or not?

Dr. Unwin: Sometimes; if not, they do have friends around. Particularly, once again, the hippie community is a very self-protective type of community where they care very much for one another. It is rather attractive in some ways to see the sense of community responsibility these young people have.

Mr. Pugh: It is the equivalent of a backseat driver, I guess.

Dr. Unwin: Oh, it is more gentle and more acceptable than that. Backseat drivers to me are equivalent to mothers-in-law.

An hon. Member: Doctor, but your mother-in-law is in Australia which is a long way off, so you can say that.

Mr. McCleave: I think most of the questions have been asked but I have one small point. Our colleague, Mr. Klein, in his explanatory note listed drug addiction as one of the current results from some types of mental illness or disorder. But I take it that the habits we have been dealing with are not parallel to that statement and the use of these substances by young people is not necessarily the result of, or even the makings, of a small type of mental illness or disorder.

Dr. Unwin: That is correct, sir. It is a fact, first of all, unfortunately, that the young people who are attracted to these drugs as a continuing thing—not as a one-shot experiment nor just taking them to rebel or to be one of the gang—the ones who like to take it a lot, these tend to be the very young kids who are developing or already have personality problems and, of course, the whole thing becomes compounded. But, it is quite inaccurate to presume that anybody using, for example, something like marijuana, is necessarily psychiatrically ill. If so, from what I understand from hearsay and also from what I have read, for example, in the *London Times*, we are going to label as psychiatrically ill some very prominent psychiatrists, politicians, members of religious establishments and so on. There is no evidence of this.

An hon. Member: Hear, hear.

An hon. Member: Stay around for a while, we must protect our own.

Mr. Forest: How widespread is the use of drugs by young people in Montreal? What are your feelings about this?

Dr. Unwin: I have become very sensitive, sir, to giving a figure because it has all sorts of complications. Let me put it this way, first of all. Both myself and other members of the medical profession are members of the youth squad of the Montreal Police Force, members of the social security squad and people we have all been in contact with are very concerned about the extent of it and the way it is spreading.

Do you have to have statistics? Do you have to say something is not serious until it reaches a certain figure? I think not. I think a thing becomes a social problem when society becomes concerned enough about it and certainly the significant people in society as regards drugs are very concerned. They are the school boards, the school teachers, the police, the medical profession and so on. I cannot quote figures. I do know of some high schools in Montreal where I have been told by the principal and by the students that 10 per cent of the young people in that school have used marijuana. At the same time, if I quoted that in a public address, I would have two things happening. First of all, I would have accusations made that I am sensationalizing a problem which is not that big. This will come from perhaps the adults, the so-called establishment. On the other hand I will

get calls from young people saying: "Why are you playing it down, Doc, you know that it is more than 10 per cent?" So you just do not know where to go in the middle of all this. It has become a serious problem to me because people with a reasonable sense of responsibility toward society have declared it to be such. Is that too vague for you?

Mr. Forest: Oh no, that is all right. What are the facilities for research in clinics apart from yours—the one you are attached with at the Royal Victoria Hospital? Are there any others?

Dr. Unwin: Any hospital in any town or city in Canada, I think, certainly would give immediate assistance to a young person who urgently needs it. In terms of long term treatment, we run into considerable difficulties because of lack of facilities. We do not have the beds; we do not have the trained staff, we do not have the money for paying salaries nor for research at present. It is quite difficult to get this right now. I think the facilities are, in fact, seriously deficient.

• 1200

Mr. Pugh: I do not want to have another round, Doctor, but I do have one point with regard to all this sort of hysteria and propaganda that is taking place. Coming back to your education and proper publicity from an educated point of view, the suggestion was that there should be a counter balance or a counterweight to keep the whole thing in balance. You sort of intimated that medical authority could probably give this but we do not have time for a proper clinical result or a balanced opinion from the medical profession itself, just because we do not have the funds to set all this up and it does take time. I take it that it would be a matter of years before you could get any results.

Dr. Unwin: Yes.

Mr. Pugh: What I am getting at is the statement you made previously that youth is always one step ahead. The doctor over here, Dr. Howe, stressed this. Do you feel that on the first intimation by anyone, whether police or parents, that there is some new drug on the market—I do not mean an addictive drug but something the kids can use—some form of authority should, at that time, get something out to the press to be prepared for this well in advance of the general hysteria that goes on when any new drug comes into the market?

Dr. Unwin: I would like to see this very much. I think this is highly desirable. I think it is absolutely necessary.

Mr. Pugh: Do you think there should be a direct responsibility, let us say on the Minister of National Health and Welfare, to be sure that his office is informed immediately here is something new in the wind?

Dr. Unwin: Yes, I think so. I think that would be part of the solution of the problem. Mind you, as I am sure you are aware, it is not so much the fact that somebody should come out with a balanced authoritative statement about a particular drug; it is very much the way in which it is presented because of the perennial capacity of youth automatically to charge at every red flag that authority waves. Quite often just somebody saying "this is a bad drug. Do not touch it," will induce some young kids to do just that, just for the hell of it. We are always going to have this problem.

Mr. Pugh: Yes, but I just want to follow this through. It is a matter of handling things and, as we always say, selling your point of view. If the press, taking its responsibility would, while playing up the one side give all the facts on the other side, not as though it is coming from the government but in a cautionary way saying: "Now, look out boys. This is something that can happen." Would that not be a good way of handling it?

Dr. Unwin: Yes. When we are talking about the press, we are talking about all the media of communication, of course.

Mr. Pugh: Yes.

Dr. Unwin: Television and radio included. Yes, I think so. If they can give a good, balanced approach like this, this is very necessary, so long as it is not put across in a dictatorial or a lecturing type of way to the young people, and if it can be got across in the manner of "Look, we are saying this because we are concerned for your individual welfare; that is all."

Mr. Pugh: I have one other point. It is in regard to availability of all these new substances that come out. This latest one you have just mentioned; in the last two days we have heard...

Dr. Unwin: The so-called "witches' poison."

Mr. Pugh: We will call it the "witches' poison" then. I go back to prohibition days when

you heard about people who were on restricted lists for liquor, and so on, as well as in more recent times. There was always a run on extracts—vanilla extract and all the rest. This was the sop that they were able to get and head for skid row—"rubby-dubs" and all the rest. This was their cheap form of something in the nature of liquor.

We do have a certain amount of legislation on that but also—and I am going to the point of responsibility again—there is the responsibility of the normal citizen. Surely to goodness, if there was a run on something, particularly after the publicity the "witches' brew" will get from now on, the sources from druggists and drugstores should dry up. It should not be readily available, not because of a law but because of a sense of responsibility on the part those who have it available for normal use.

Dr. Unwin: I could not agree more but I am told—and I have no reason to doubt this—that there are always druggists available who, for the sake of making a bit of money and usually charging more than the product is actually worth, will make just about anything available to anybody.

• 1205

Mr. Pugh: To 13 year-olds and 15 year-olds?

Dr. Unwin: It appears so. When I wondered how in Heaven young people had some of the antidotes for some of these drugs and asked them, they said: "Oh, you know, such and such a drugstore. You go there and they will give it to you." I said: "Without a prescription?" They said: "Sure, doctor, you know. Do not be naive. Of course, if you pay for it."

Mr. Pugh: I go back to glue sniffing. Obviously that is not something on a drugstore shelf. That is here, there and everywhere.

Dr. Unwin: Yes.

Mr. Pugh: I am thinking about the responsibility of "Mr. Average Citizen" if he happens to be in that particular trade. Is there no way of getting to him by way of publicity and in some way or other trying to dry this thing up to certain extent?

Dr. Unwin: Yes; I am thinking, for example, of what I have read in the press about this current drug, once again the so-called "witches' poison". Fortunately, probably nobody yet has used the correct trade name of this drug by which it is easily identified. Even the newspapers have avoided this. I

think this is very desirable so that kids will not be rushing out to get such and such a drug called "X". They will not know what it is.

The statement made by pharmacists, apparently, was that the College of Pharmacists should ban this drug, implying that they wanted direction from on high before they make a move themselves. One would hope that any reasonably responsible citizen who had the ability to stop the free distribution of this drug would do so on his own undertaking but obviously it is not happening.

Mr. Pugh: Speaking, not clinically, from all your experience on the various things that have come forward, would you say that this latest one, the "witches' brew", could have very harmful effects on youths as they are growing up?

Dr. Unwin: Oh, yes.

Mr. Pugh: I am saying "not clinically" but have you sufficient evidence to feel that this may be most harmful?

Dr. Unwin: First of all, clinically it is an enormously dangerous drug. Apparently the young people are taking one teaspoonful but if they take three probably it will kill them. It is a lethal drug.

Mr. Pugh: Has any publicity to this effect been in any newspaper?

Dr. Unwin: Yes.

Mr. Pugh: It has?

Dr. Unwin: Yes. Now, forgetting the clinical side of it, I think the whole philosophy, the whole ethos surrounding the use by young people of drugs, is extremely dangerous, insidiously dangerous, because it implies certain things which must be of detriment to the growing young person and, therefore, ultimately to society.

First of all, if something looks attractive enough, go ahead and do it. Most of these drugs that the kids are taking are highly dangerous and they know they are—most of them do; the vast majority—but they still go ahead because they are told it feels good.

If you talk to young people about, let us say, marijuana, of which the danger is highly debatable, and say: "Well, why do you take it?" They say: "It feels good." I say: "Yes, but what about the fact that you are contravening a criminal law?" They will say:

"Well, you do not get caught." And I say: "You just might be." The answer is: "Well, look doctor, I am under 18 and I know from what I have read in the paper that I will not get much of a sentence at all. I will get a warning; maybe I will get a few days in detention. It is not worth worrying about."

If they are under 18 they do not get a criminal record, of course. If they are over 18 they do and, therefore, they seriously sabotage their chances of getting into any profession, and so on.

Mr. Pugh: You say that it would stop their chances of getting into a profession. It would indicate that they come from all walks of life.

Dr. Unwin: Oh, yes. I want to stress this. You see, traditionally—and let us say even up until two years ago—if anybody talked to me about drugs and teenagers, from my training and reading I immediately thought: yes, kids living in slums, broken homes, economic disadvantages and so on. The classic studies have been done among the Negroes and Puerto Ricans of Harlem.

• 1210

This particular fad or wave that is going on now primarily is a phenomenon of the affluent middle-class young persons coming from homes that are quite comfortable, that have a high level of education in them. As I have said in my paper, it is a mistake to think you can identify a drug taker by looking at him. He does not look like some little kid from the slums and he does not necessarily look like a "hippie". Far from it. He can be any variety of Canadian youth at all and this has spread throughout the various strata of society but is essentially an upper-middle-class phenomenon. With all due respect, any one of your sons or daughters could be involved. There is this philosophy that I was talking about. First of all, there is the fact that young people get the attitude that if they want to do something they may as well do it. This may, in part, be a manifestation of the North American total approach of "buy now and pay later".

Another insidious thing is that they learn that if things get rough they should take some way out. If they feel rather frustrated, or depressed—and I think many of these young people continually taking drugs are quite depressed and unhappy—they may learn the philosophy, or, if you like, become conditioned to the fact, that if they are frustrated, or depressed, or suffering from anxiety, the best thing to do is to "turn on", or to intoxicate themselves to get away from it. Again,

they may be partly learning this from parents who just have to have a martini when they come home in the evening.

Mr. Pugh: I was just going to say that. Is there a parallel with liquor?

Dr. Unwin: Very much so, yes. As part of their sense of values and social responsibility as they are growing up it is very dangerous for young people to have the philosophy that if things get rough they can just pull out of the whole situation. This is not going to encourage them to take responsibility, to give leadership and to persist at difficult tasks when they are older. This will not have very good results for society.

Of course, in talking about this I am sure we are all aware that we are not referring to the vast majority of North American youth. We may be talking of no more than, say, somewhere between 5 and 10 per cent. Let us arbitrarily make 10 per cent the upper limit.

Mr. Pugh: That is a significant number.

Dr. Unwin: Yes; if it is that high *in toto*; or even 5 per cent. The point is that they come from the strata of society with the educational background that traditionally produce the leadership of any country. They are not coming from disadvantaged slums. They are coming from families which traditionally have produced college students. In fact, a percentage of them are college students. Surveys that have been done indicate that roughly 20 per cent of college students in America, England and Canada have had experiences with marijuana.

Mr. Pugh: Doctor, we have the various drugs and the near-drugs. Would you say that there is any organized crime behind the finding of new thrills and the dissemination of them?

Dr. Unwin: First of all, I do not categorically know. One continually gets reports from the young people themselves that crime syndicates are moving in on the scene, as they say.

Some of us predicted quite some time ago that if the approach to these drugs was just one of legislative prohibition this would be an invitation to the various criminal syndicates to move in on what is, after all, an enormously affluent market. The teenage market in North America is an extremely rich one, as you know. The young people themselves say that there is already evidence of this, and

that some of the young "pushers" who are selling the stuff independently are themselves being beaten up and warned.

Other evidence of this may be the increasing number of claims by the young people themselves that the drugs they are receiving are being mixed with more dangerous drugs. The kids are not told about this. For some time there has been a strong rumour in Montreal that marijuana is being cured in opium, obviously with the hope that they become addicted to opium and crave for it and, therefore, become a steady market for the suppliers. Some of these alleged opium-cured samples have been tested, and there was no opium in them, but the young people still insist that there is something wrong with the marijuana. There are rumours that heroin is being put in with it, but that has not been proved.

We do know, for example, that in Montreal and in most of North America now the average capsule of LSD contains a little bit of LSD, which is not an addictive drug, and a big, heavy dose of what the young people call "speed"—methadrine, the amphetamine, which probably is an addictive drug.

Therefore, you have this phenomenon of young persons telling you that they are taking LSD. Now I, as a doctor, know that LSD is not addictive and does not produce physical dependency; yet I get the feeling that these young persons are "hooked", or dependent, on this particular thing. What I think they are dependent on is not the LSD but the methadrine.

These insidious things are going on and producing what we know as the classical addiction, or craving—need for the drug—even at a physiological level; and this, of course, creates a steady market.

The other aspect is whether or not crime syndicates are involved. Ultimately, they must be. I do not know where the original sources of these drugs are. We know the countries, to a certain extent, but who are the people involved? How does a young boy of, say, 16, 17 or 18, arrested in Montreal with a suitcase containing marijuana alleged to be worth \$50,000, get the money to buy that sort of thing? Perhaps he gets it on credit, but how does he make the contacts, and where are they?

I have asked a number of young people who know the whole scene pretty well. They say, of course, that it ultimately goes back to the same sources as those engaged in the

international traffic in heroin, opium and cocaine, and so on. Therefore, somewhere in the background a highly organized syndicate must be involved. It makes sense. These young people are not going into a field in Mexico and pulling a couple of handfuls of marijuana and then coming back over the border. They are bringing large suitcases across. This must ultimately be distributed through a fairly well organized syndicate of some sort.

The Chairman: Thank you, Doctor.

Mr. Stafford, you came in late. Do you have any questions?

Mr. Stafford: No, I do not think so.

The Chairman: Doctor, what research is being done on the side-effects of these non-addictive drugs.

Dr. Unwin: On most of them, Mr. Chairman, quite a lot of research is going on. It is significant, however, that since the recent public hysteria in the last year it has become more difficult to get research going. LSD can now only be obtained by certain recognized institutions which are usually associated with universities for research. Until recently in the United States there was the ridiculous situation that no doctor in valid research could obtain LSD, but he could go down to the local coffee house or to the local campus and get as much as he wanted from the illegal "pushers".

It is not like that in Canada, but it is quite restrictive. You have to show that you have a pretty good research design, and so on, before it is allowed. And I think this is fair enough.

However, the drug that is, perhaps creating most controversy and the greatest amount of pressure on legislators and on public opinion is marijuana. To my knowledge there is virtually no research being done on the effects of this drug, particularly in the long-term effects.

The Chairman: Who should carry on this type of research? Should it be the teaching hospitals, such as the Royal Victoria, or should it be the provincial ministers of health or the federal minister of health?

Dr. Unwin: Ideally, it should be done within universities where there are trained people with the know-how and the facilities, not just at a clinical level. You have to involve pharmacologists and pathologists, and so on, as

well as the clinical specialties. I am very much of the opinion that it should be done in university departments.

The Chairman: My next question is probably not germane to our inquiry, but, as you know, in a certain area of Toronto quite a situation exists in regard to people who are classified as "hippies".

Dr. Unwin: Yes.

The Chairman: What is your reaction to them, as a group? I read an article in *Reader's Digest* and it was quite distressing. Have you any comment to make on them?

Dr. Unwin: They are an enormously heterogeneous group. I have been trying for six months now to define "hippie". I cannot do it because I cannot find one single criterion which distinguishes them as a group. They do not all take drugs. They do not all wear beads. They do not all have long hair, so on and so on.

You can sort of divide them up into roughly three areas. They do not like me to do this because they say I am classifying them as figures rather than as individuals. Still, one has to make an attempt.

First of all, there are what are called the teeny-boppers, the young ones who hang around the fringe. A large number of these young people are home-runaways. I do not know what the figure is for Canada, but in the U.S. last year there were over 90,000 teenage runaways. They run away from home for various complex reasons. They come into the hippie cult because they are looked after by the hippies, protected by them and sometimes encouraged to go back home. They, of course, make contact with the drug scene.

• 1220

Then there is the "hippie" proper, who is the fairly intelligent, often highly articulate, person of college age. He is either a college drop-out or he is actually a college student. You see them on campus at McGill with their full paraphernalia, coming to their lectures, and then at night going off to their hippy pads. A lot of these kids, of course, are involved in drugs, particularly marijuana, although in fair play I would stress that the studies that have been done have shown that these people are not delinquent, except for the fact that they are dealing with illegal drugs, but there is no other association with crime or delinquency, at all.

These people are the ones who have formulated, to a large extent, the hippy philosophy—the disgust with middle class values, hypocrisy, the plastic society; some of the philosophy of which I must admit I quite share their sympathy. I do not think their techniques for dealing with this are wise or likely to be successful. I do not think you change any society by dropping out of it, and I do not think you change anything or help yourself by taking intoxicants on a reasonably regular basis.

Now the other group, the third group, are what we call the hard acid heads". These are people often quite disturbed. A lot of them, I think, are urgently in need of psychiatric help. These are the people who withdraw into a very paranoid, suspicious and sensitive little clique, and who will not mix with anybody except members of that clique. They are convinced that anybody over the age of twenty-five who does not have a beard and who comes near them, must be an R.C.M.P. undercover man. This particular group has a high amount of physical illness among them. First of all, chronic upper respiratory tract infections from marijuana, from poor nutrition, from poor living conditions; a high rate of infectious hepatitis because more and more they are using intravenous methedrine and passing dirty needles from one to the other and spreading this infection; a high rate of venereal disease—quite a high rate of venereal disease—and a fairly high rate of malnutrition, in general. These people are often physical and psychiatric messes and are highly unapproachable.

Mr. Pugh: What does the word "acid head" mean?

Dr. Unwin: LSD is called "acid" as a vulgar term. It is d-lysergic acid diethylamide, so they call it "acid". An "acid head" is somebody who takes "acid" very frequently and is part of almost a religious mystique.

Mr. Pugh: It seems to me the officer with a beard would be more likely to be an undercover man.

Dr. Unwin: Some of them are, of course. Some of them do wear the full hippy paraphernalia, but it is rather hard to cover certain things. Some of the kids say they can tell by the size of the feet. I do not believe this.

Mr. Aiken: Mr. Chairman, I just want to clear up this classification. Would you not agree that there is another class that associ-

ates with hippies who are not hippies. They are the so-called "greasers". The ones who come in for the sole purpose of causing a disturbance.

Dr. Unwin: Yes, you see this.

Mr. Aiken: The reason I raised this is that earlier you mentioned the true hippies, themselves, are really involved in the philosophy of living which, in a large part, is not necessarily detrimental to society. But, in many of the so-called hippy hangouts, these "greasers" eventually show up and they are rough characters who would rather give the whole area a bad name.

Dr. Unwin: This is true and this has certainly happened in Montreal, for example, to the extent where certain facilities which were set up for hippies by church speakers or someone else had to be closed because the "pushers", or as you call them, the "greasers", started coming around in too great a number and often these places ended up being raided.

It was rather ironic that one of the ways in which the hippies tried to protect themselves against this brand of person was to call in—this may have happened spontaneously—more and more of the motorcycle gang type. I have noticed them hanging around with the hippies and they have become the Hell's Angels type in Montreal, one group is called Satan's Choice. They have become the protectors of the hippies. Some of them take a certain amount of drugs themselves, but they are there, primarily, to stop these other wolves from coming in on this flock of innocent lambs.

Mr. Aiken: I am told that a good many of the hippies have left Yorkville, which is Mr. Cameron's part of the country, and that most of the people who are left are not hippies at all.

• 1225

Dr. Unwin: I have read that certain authorities in Toronto have pledged themselves to rid Yorkville of this hippy menace. I am sometimes a little bit dismayed by the pronunciamientos of public figures about the alleged dirtiness, the alleged criminality or perversity of hippies. I have been in quite a few hippy crowds, you know, and I have never yet smelt unclean flesh, and I am sensitive enough to people who do not use normal bodily hygiene. You do not smell this.

A certain prominent lady Member of Parliament described the hippies as being a plague of grasshoppers, and un-Canadian. Somebody else out in the West said they are a mob of hooligans and bums and he would run them out of the province. How do you expect young people to react to this sort of thing, particularly, if it is not true?

Mr. Howe (Hamilton South): Do the police not go in and find drugs? You have been speaking about marijuana and so on being available in these hippy pads. Do the police not go in and raid them shall we say, and arrest them, or do they seem to stay clear of it? Do they have an idea of helping them in another way? I just do not understand how this goes on.

Dr. Unwin: This is the peculiar thing about it. There are incessant raids on so-called hippy pads, not just to look for drugs, but they are closed down for reasons of poor hygiene, fire hazards and so on. The classic pad is a room in a rundown building, in a rundown slum area of town, where the landlord will take any rent he can get for it. The kids just put a mass of mattresses over the whole of the floor. Anybody can come there and get a free bed. And there may be some food and that. No matter where they come from—they arrive in town from San Francisco, Los Angeles, Toronto and so on—they will come to a certain café where the the hippies hang out and they will say: "Look I need a pad—a bed—for the night". Their reply will be: "Right, come to such and such an address". This is the self-help concept of it.

The police do raid these places, particularly, if they have any reasons to suspect that there might be a large cache of drugs, or there might be a pusher involved. They will swoop down, but, as far as I know, it has not had any real affect on the availability of the drugs.

It is said now by some people that marijuana is somewhat difficult to get in Montreal at this time, not because of the activities of the law enforcement agencies, but because it is the wrong season in Mexico. It is not grown during this particular time of the year down there. It just continues to go on because, you see, the young people themselves distribute this and give it to one another. The young people, as I said, can be any variety of Canadian youths so they do not come to attention, they do not wear dark glasses, double-breasted suits nor look like the stereotype criminal.

Mr. Howe (Hamilton South): Whatever that is.

Dr. Unwin: Yes.

The Chairman: I take it there are no more questions?

Before we adjourn I would like to have the following motions passed, if possible. You do not need to listen to this one, Dr. Unwin. That reasonable living and travelling expenses be paid to Dr. J. Robertson Unwin who was called to appear before this Committee on January 25, 1968 in the matter of Bill C-96. Could I have a motion by someone?

Mr. Forest: I so move.

Mr. McCleave: I will vouch for the motion because this is one kind of a trip of which I approve.

The Chairman: Is there any discussion on the motion? All those in favour?

Some hon. Members: Agreed.

The Chairman: A similar motion is needed with regard to the payment of the living and travelling expenses of Professor A. M. Linden who will be here as a witness on Tuesday next, dealing with the subject matter of compensation to persons who are disabled as a result of crime.

Mr. Aiken: I so move.

Mr. MacEwan: I second the motion.

The Chairman: Is there any discussion? All those in favour?

Some hon. Members: Agreed.

The Chairman: Mr. Choquette, you came in late and you have not had the advantage of hearing Dr. Unwin, but it may be that you may want to ask a question.

Mr. Choquette: No, Sir. I am going home during the weekend if you want to pay my expenses.

• 1230

The Chairman: Before we adjourn I wish to thank Dr. Unwin, on behalf of the Committee, for his attendance here this morning. I think you will all agree with me that we have heard a man who has a 100 per cent understanding and knowledge of the matters he has been discussing. I think we can assure him that we have enjoyed his presentation, the

very full and complete answers that he has given, and, I think, we all will agree that what he has told us will be of great future benefit. It makes all of us think; it makes all of us make up our minds that we probably

are going to do something about it, somewhat along the lines of what you have suggested, Doctor. On behalf of the Committee I want to thank you most sincerely.

The meeting is now adjourned.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS
Second Session—Twenty-seventh Parliament
1967-68

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 16

TUESDAY, JANUARY 30, 1968

RESPECTING
The subject-matter of
Private Member's Notice of Motion No. 20
(Criminal Injuries Compensation Board)

WITNESS:

Dr. Allen M. Linden, Professor, Osgoode Hall Law School,
Osgoode Hall, Toronto

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe	Mr. Pugh,
Mr. Cantin,	(<i>Hamilton South</i>),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	Mr. McCleave,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, January 30, 1968.
(18)

The Standing Committee on Justice and Legal Affairs met at 11.20 a.m. this day.

Members present: Messrs. Aiken, Choquette, Forest, Honey, Howe (*Hamilton South*), MacEwan, McCleave, McQuaid, Pugh, Ryan, Tolmie and Wahn—(12).

In attendance: Dr. Allen M. Linden, Professor, Osgoode Hall Law School, Osgoode Hall, Toronto.

In view of the unavoidable absences of the Chairman and the Vice-Chairman, the Clerk called for nominations for an Acting Chairman for the meeting of this day. It was moved by Mr. Aiken, seconded by Mr. Honey, that Mr. Wahn take the Chair of this Committee as Acting Chairman.

There being no other nominations, the Clerk declared Mr. Wahn duly elected Acting Chairman for the meeting of this day, and invited him to take the Chair.

Mr. Wahn thanked the Committee for the honour bestowed upon him. The Committee continued its hearings in connection with the provisions of *Notice of Motion No. 20*. The Acting Chairman introduced the witness, Dr. Allen M. Linden, Professor at the Osgoode Hall Law School in Toronto.

Professor Linden read a prepared statement entitled *Compensation for Victims of Crime in Canada?* Following his statement, the witness was questioned by the Members for the remainder of the meeting.

The Acting Chairman mentioned Professor J. LL. J. Edwards, Director, Centre of Criminology, University of Toronto, who is on leave of absence at the University of Cambridge in England. Professor Edwards sent a copy of his article entitled *Compensation to Victims of Crimes of Personal Violence*, reprinted from *Federal Probation*, Washington, D.C., June 1966. Copies were distributed to the Members and the Committee agreed to file the article as an Exhibit. (*Exhibit M-20-1*)

The Acting Chairman thanked Professor Linden for the useful information which he had conveyed. At 12.45 p.m., the Committee was adjourned, to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, January 30, 1968.

1120

The Clerk of the Committee: Mr. Wahn is lected as Acting Chairman.

Mr. Ian Wahn (St. Paul's): Thank you very much, gentlemen, for this completely unexpected honour. I assure you I did not do too much lobbying. I asked our guest out for lunch but I did not realize that it would bring about this happy result.

I believe you all have copies of Dr. Linden's brief. Dr. Linden was invited to appear on this motion. Probably most of you have met Dr. Linden. He is eminently well qualified to discuss the problem of compensation for victims of crime. He is associated with the Osgoode Hall Law School, which is currently engaged in a statistical survey of victims in the metropolitan Toronto area. I think unless members of the Committee have any other suggestions that we will call upon Dr. Linden to make his opening remarks, following which we will have our usual question period. Dr. Linden?

Dr. Allan M. Linden, B.A., LL.M., J.S.D. (Osgoode Hall Law School, Toronto): Thank you very much for inviting me. It is the first time I have ever appeared before a Committee of the House of Commons. This particular Committee has earned a lot of my interest and a lot of the interest of people around the law school and the profession. What I propose to do today, if it is all right with you, is read through these few pages that I have placed before you, which are primarily a statistical result of the study that we did. I will then certainly welcome any questions that you may have in this regard.

Mr. Morris, while tending his shop, is robbed and killed by an unknown assailant. Mrs. Corry, while crossing a field on her way home from a shopping trip one afternoon, is attacked and raped by an unemployed man. John Howard, while taking a stroll on a main street on a Saturday night, is savagely beaten up by three youths in black leather jackets.

Our criminal law of course, prohibits this conduct; the unknown killer, if caught, would be sentenced to life imprisonment; the man who raped Mrs. Corry would be sent to the penitentiary for 10 years and the three youths might be put away for 6 months. But what about Mrs. Corry, what about John Howard and the widow of Mr. Morris? What, if anything, does society do for them?

There is a common misapprehension abroad that our law provides no remedy at all for these victims of crime. This is false. There is provision in the law of torts for a civil action to be brought against people who assault and batter other people or take another's life wrongfully. Thus, in these three instances, the victims are entitled to sue their attackers for damages which can be substantial. Unfortunately, however, this right to sue is usually only an empty shell.

Mr. Howe (Hamilton South): Do you want us to ask questions as you go along or would you rather we wait until you have finished?

The Acting Chairman: Do you have any preference at all?

Dr. Linden: It does not matter to me.

The Acting Chairman: What would the Committee prefer?

Mr. Aiken: I think it would be better, Mr. Chairman, if Dr. Linden read through the brief, because often we ask questions which require lengthy answers.

Dr. Linden: It is only eight pages and it should not take long.

The Acting Chairman: It might help our procedure if you could make a note of the particular questions so you will not forget it, and then we will call upon you first.

Mr. Aiken: Fine, Mr. Chairman.

Dr. Linden: Unfortunately this right to sue is usually only an empty shell.

Any court judgment obtained would be worthless for the murderer of Mr. Morris was

never apprehended, the man who raped Mrs. Corry was unemployed and impecunious, and the black leather jacket boys of course, were men of straw. Consequently, our law of torts, though in theory available to assist, is in practice powerless to do so.

The sorry plight of victims of crime has received much attention throughout the world of late and certain advanced legislatures have begun to respond. Several jurisdictions including the United Kingdom, New Zealand, California, New York and our own Province of Saskatchewan have established new compensation schemes to assist financially the victims of crime and several other jurisdictions, including some in Australia, the United States and our own Provinces of British Columbia, Manitoba, Ontario and Nova Scotia, are reputed to be studying the problem. It is therefore, fitting that the Justice and Legal Affairs Committee of the House of Commons, which has already had such a significant impact on reforming some of our outdated laws, undertake a consideration of this question.

Although there has been substantial public debate however concerning this problem, there has been very little effort made to assemble the facts upon which to base a legislative judgment. Is there a social need for compensation or has our elaborate system of social welfare legislation eliminated such need? Just how is the present tort system functioning in providing reparation for these victims? Will the cost of such a plan be prohibitive? What are the opinions of our people on this issue? Because the answers to these questions would be relevant to legislators concerned with this matter, we at the Osgoode Hall Law School designed a survey to assemble, as best we could, some of the factual data we now lack.

With the co-operation of the Toronto Police Chief James E. Mackey and the Metropolitan Board of Police Commissioners, the records of concluded crimes of violence committed in Metro in 1966 were made available to us. We then sent letters to 431 individuals who were involved as victims in the crimes of murder, manslaughter, attempted murder, rape, attempted rape, wounding and robbery. I have attached a copy of the letter and the questionnaire to the material so that you could see just what process we used.

After we sent these out, if there was no response, we sent another letter and if there was no response after that, we telephoned the people. In this way, we were able to collect

172 completed questionnaires upon which our findings will ultimately be based. I must warn you that much more analysis remains to be done on this data, but for your assistance in disclosing to you today some of our tentative or preliminary findings. These will be limited because we are not quite thorough with our study of the responses with regard to just three of the crimes investigated—rape, wounding and robbery.

These are some of the preliminary findings. With regard to financial losses the survey indicated that some economic loss was suffered by 79 per cent of all the victims of crime studied. Surprisingly, not all of the victims of crimes of violence incurred financial losses. For example, a rape victim might not require or seek any medical attention and a robbed merchant might have the articles taken and returned immediately to him. Consequently, 21 per cent of the victims had no loss.

An examination of the type of loss disclosed that medical costs, for instance, were incurred by 42 per cent of the victims; hospitalization by 29 per cent; income losses, one of the most important types of loss, occurred in 23 per cent of the cases studied. In the wounding cases, income loss was suffered in 33 per cent of the cases, while it was less frequent in the robbery cases, happening in 1 per cent of the time. Property loss was the most prevalent, transpiring in 51 per cent of the studied cases, but this can be explained by the fact that our sample included a large proportion of robbery cases where this frequency was high.

• 1130

With respect to the non-tort recovery, the analysis of the sources of recovery have so far proved rather disappointing. What I mean by "non-tort" sources are public and private insurance, medicare, hospital care, and things like that.

One might have thought that public and private insurance, with the large amount of attention lavished upon it these days, would have fully covered most of these expenses; but this does not appear to be the case. Of those incurring medical costs, only 36 per cent were recorded as fully recompensed by the present medical coverage schemes. In the case of hospital cost, the recovery pattern was also dismal. Of the respondents suffering these losses, only 46 per cent were shown as fully reimbursed. Income expenses recovery was, still worse, with only 2 per cent of those suffering such loss stating that they were

completely recompensed. In the property loss cases, finally, 7 per cent responded that they were totally reimbursed.

Now the tort recovery, this is the availability of the cause of action in civil law. Just how does it work? This tort suit for damages is always available to supplement their recovery from private and government insurance. Our survey has demonstrated conclusively how illusory a right this is, because only 4 per cent of the victims of crime studied actually recovered any money from the person who attacked them! Nor only did a mere handful of people recover, but hardly any of the victims even considered suing; still fewer consulted lawyers with regard to their legal rights, and fewer than that ever attempted to secure any reparation. Only 15 per cent of all the victims studied considered suing; only 5 per cent consulted counsel and slightly less than 5 per cent attempted to recover.

The reasons given for this are obvious. In many cases, of course, the criminal was never apprehended at all, which would make a civil suit impossible. Many stated that they just did not think of suing, others believed (wrongly) that their private rights lapsed if the state punished the criminal and still others felt that it was just not worth the cost and trouble to press their civil rights.

There are some interesting variations with regard to the type of crime. The rape victims studied unanimously wanted nothing more to do with the matter and none saw a lawyer or tried to sue. The victims of wounding, on the contrary, were more likely to pursue their assailants, 42 p. 100 of them considering suit and 20 p. 100 consulting a lawyer. In the robbery cases 9 p. 100 considered suing and 2 p. 100 consulted a lawyer.

In conclusion, one can state categorically that the tort suit plays an insignificant role in supplying financial aid to the victims of crime.

Out-of-pocket Losses

After taking into account all the receipts from non-tort and from tort sources, 55 p. 100 of the victims of crime studied still were out-of-pocket as a result of their experience. This means, of course, that 45 p. 100 of these people eventually did recover all of their expenses and thus incurred no out-of-pocket loss. (This calculation considered only economic losses of course, and did not take into account the pain and suffering element that the tort law would take into account if it applied).

Looking more closely at the 55 per cent who ended up with out-of-pocket expenses, most of them incurred only small amounts of loss; 35 per cent lost between \$1-\$49, and 17 per cent lost between \$50-\$99. The balance lost somewhat more; 16 per cent between \$100-\$199, 8 per cent between \$200-\$299, 7 per cent between \$300-\$399, 2 per cent between \$400-\$499, 9 per cent between \$500-\$999, 3 per cent between \$1,000-\$2,000, and 2 per cent lost over \$2,000. At least 47 per cent then of those who suffered losses, were out-of-pocket over \$100 and about 14 per cent of those who suffered losses were out-of-pocket over \$500.

• 1135

Looking at the total lost by the people studied in our study it was \$23,329 and the average loss of those who incurred some out-of-pocket expense was around \$251 on the average. These of course, excluded homicide cases where the cost would be much higher. Looking at the specific crimes, the average loss in the rape cases—the cost of a rape in Toronto was \$77—it was \$264 in the wounding cases, and \$272 in the robbery cases.

Of the total money lost, only 4 per cent of it was lost by those with insignificant losses of \$1-\$49, that is 35 per cent of the people suffering out-of-pocket losses. On the other hand, those with the large losses of over \$1,000, who numerically make up only 5 per cent of the people, had total out-of-pocket losses of 46 per cent. Thus, the great bulk of those victimized by crime could be serviced rather inexpensively, but the relatively small number, who incur large losses, would require more substantial funds for distribution.

In conclusion, let me summarize that these preliminary findings have disclosed that a large number of the victims of crime suffer some economic loss initially, that is, 79 per cent of them. Although a substantial portion of these expenditures are recovered by the victims from the various non-tort sources now in operation, the bulk of these expenses are not so reimbursed. Theoretically available to assist in all these cases, the tort law remedy has failed to supply compensation for the victims of crimes. For in only 4 per cent of the cases did anyone succeed in collecting any money from his attacker via tort law. But, after all these sources of recovery were added together, only a few of the victims of rape, robbery and wounding that were studied ended up with large out-of-pocket losses. Nevertheless, it is these large losers that most need societal attention focussed upon them.

Would the cost of a compensation plan for Canadian crime victims be prohibitive? Most of the British payouts, for example, have been quite small, frequently less than 200 pounds. Only rarely have the awards been substantial: for example one student who suffered brain damage recovered 15,000 pounds; I think that was the highest award so far; a blinded boy got 13,500 pounds; a widow and the two children of a man who died while chasing a housebreaker received some 5,500 pounds. And a similar pattern to this could be expected to emerge, I think in Canada.

Let us make some rough comparisons with the British scheme. In the first two years of its operation, it paid 1,979 awards, averaging approximately 368 pounds each, for a total pay-out of 727,953 pounds. In Canadian dollars this scheme would cost in the neighbourhood of \$2,000,000 in its initial two years. But the operating cost of the British plan has increased since its infancy as more people learned of its existence and as the inevitable time lag in paying claims evened out. In a study done in July, 1966, for example, the scheme paid out 78,000 pounds or about \$200,000. At this more realistic rate the British scheme is probably now distributing about \$2,500,000 annually. Since Britain's population is 50 million to our 20 million, the cost of a Canadian scheme similar to the British (of course, this excludes administrative costs and this also assumes that all other factors remain the same) could be estimated at approximately \$1,000,000 annually, or to be put another way, a contribution of five cents for each Canadian. (It should not be forgotten that the British plan pays for pain and suffering and it has a deductible feature of 50 pounds or 3 weeks salary).

Should a plan to compensate victims of crime be established? You legislators must consider the arguments both ways, assess the facts presented here, discover the estimated cost of such a program and make a value choice for Canada in accordance with your own consciences. However, one thing is sure—the individuals who have been victimized by crime are overwhelmingly in favour of such a scheme because of those interviewed, 92 per cent felt that compensation should be provided for victims of crime. Thank you.

The Chairman: Thank you very much Dr. Linden. Mr. Howe, Mr. McCleave and Mr. Aiken have indicated they want to ask questions.

• 1140

Mr. Howe (Hamilton South): My question will be short, Mr. Chairman. At the beginning you spoke of being able to recover losses from the assailant, if the assailant were available and had sufficient liquid assets to be able to compensate. If the victim is not apprehended is there any other course at the present time, or is this blank?

Dr. Linden: No, except for motor vehicle accident cases, of course. If a man is guilty of a criminal offence under the highway laws or under the Criminal Code because he has run over someone, then, of course, the unsatisfied judgment claims that exist across the country are available, but there is no other recourse except through private insurance plans. There are, of course, welfare measures and medicare schemes in those provinces where they exist, but not a tort law remedy. There is no one to sue, there is nothing to bring action against, and I think this is really the problem that exists today.

Mr. Howe (Hamilton South): At the outset let me state that I am quite in favour of what you suggest. My questions are not intended to suggest otherwise.

Dr. Linden: I have really been very careful not to suggest...

Mr. Howe (Hamilton South): I will suggest it, then. I am in favour of it. Do you suggest—perhaps you would like to choose some other word—that there be recovery of more than out-of-pocket losses, financial losses, and that there should be, shall we say, certain set amounts or should each crime be considered on its "merits"?

Dr. Linden: Again, it depends on how much it is going to cost. The most important thing to me, is to ensure that people who suffer economic losses, are out of work, or widows whose husbands have been killed are looked after economically. I personally would like to see something in addition to that. I would like to see an award made for pain and suffering under the law of tort but, again, this costs more and it is just a question of how much we are prepared to pay for this. I personally would not see anything wrong with having the ordinary tort law applied. In fact, my own personal recommendation would be to create an unsatisfied judgment fund for victims of crimes rather than having separate schemes. I think the present tort laws could handle it in the same way as uninsured driv-

er cases are handled. However, to date this really has not been aired too much across the country because of everyone thinking in terms of a board, which seems to be the way it is being done in most areas.

Mr. Howe (Hamilton-South): This is a matter of going to court and having it decide how much the amount should be?

Dr. Linden: Yes. Of course, as you know, sir, most of these are settled just as most automobile accident cases are settled, and very rarely do the claims actually have to be decided by a court. Quite often you will find that people do not even have to go to lawyers.

Mr. Howe (Hamilton-South): Of course I asked because of my position. I do not even know what a tort case means.

Dr. Linden: I am sorry. I assumed that most of you knew what it meant.

Mr. Howe (Hamilton-South): Most of the Committee members are lawyers but I am only a doctor. That is why I asked if this was decided by the individual making application to a court for a decision. You stated that quite often these cases are settled by some individual action. Is there a set amount set aside and, if so, how would that be decided.

Dr. Linden: Well the British statute states that tort law standards be used. However, they have set a maximum because if, for example, a millionaire was injured in a car accident he would be entitled, otherwise, to receive from his assailant \$1 million or what ever he earns per week. The British system, refusing to go that high, sets the maximum out-of-pocket income expenses at twice the average industrial wage. They have also removed the right to punitive or exemplary damages, where a large sum is awarded to penalize the defendant. The state felt that they should not pay those awards because it was not really responsible. As I said, they were using the normal tort standards except for certain maximums. Other states have set maximums of \$5,000 and \$2,000 and within that the normal court standards. It is all a question of costing and just how much you are prepared to provide for these people.

Mr. More (Hamilton South): So they have levelled some of the economic class standards?

Dr. Linden: Yes.

Mr. McCleave: Dr. Howe asked one question that I intended to put. However, I have one other question. As you know, we have frequently been faced with a constitutional problem when discussing this subject in the past. The question arises whether the Federal Parliament should have jurisdiction to legislate this compensation, a principle that I might say I accept, or whether there should be a joint undertaking to set upon unsatisfied judgment fund for these victims, with one half being contributed federally and the other half provincially. Do you have any thoughts on that subject, Doctor?

• 1145

Dr. Linden: I am not a constitutional expert but I have talked to several people about this. Probably the easiest way of doing it would be to handle it on sort of a cost sharing co-operative basis, with the federal government providing the stimulant and perhaps providing part of the fund, sort of like the Medicare type of arrangement. I would have thought that would probably be the most acceptable. However, I am assured by some of my constitutional colleagues that the federal government, under Section 91(27) of the Criminal Code, could enact legislation as an adjunct to the criminal law. As you may know, Section 6(38) of the Criminal Code now permits an order for restitution, but as it is limited only to cases of suspended sentences it is hardly used, if at all. These constitutional colleagues of mine seem to think that the federal government, if it wished to do so, could move in this way.

The other alternative is to do as the British did. They have not even passed legislation. All they have is an allotment of a certain amount of money for this purpose. It is a voluntary *ex gratia* sort of thing and the unitary government gives money out to deserving applicants. I do not think there is any prohibition against the federal government giving out money.

Mr. McCleave: Is that administered through the Home Secretary's department?

Dr. Linden: Yes, the Home Secretary's department. Apparently there is just an allocation in the budget and they have certain guidelines. It is completely gratuitous. It is a private grant by the government to a particular claimant.

So there are at least three methods of procedure. I am sure there will be some disa-

greement over the criminal law power but I doubt if there could be any disagreement in operating in the same way as the Medicare program.

Mr. McCleave: Perhaps we will try it on your colleagues for size through the Canada Assistance Plan Act since we seem to be in a field largely involving social problems arising out of need because of the criminal behavior of certain elements of society.

Dr. Linden: Well obviously the Canada Assistance Plan would apply to victims of crime just like victims of any other sort of accident or any other sort of adversity, but it applies in only rare circumstances. A person has to be impecunious, out of work and unable to look after himself, and it limits the protection you are giving to your people. There are many people who feel that even those who are not rendered totally disabled as a result of this should still be compensated in some way.

Mr. McCleave: I was thinking of it more from a point of view of mechanics or machinery, not necessarily using the same criteria that are in the plan now.

Dr. Linden: Yes. There are some other plans. For example, because the California plan is carded to need and to total disability it is restricted in what it provides, and only in those horrible cases where a person is incapacitated or is in desperate financial straits as a result of this do they provide compensation. That is a very limited scheme, perhaps the most limited that has been created anywhere.

Mr. McCleave: So I take it that you are inclined more toward straightforward compensation?

Dr. Linden: Yes, if it can be financially handled. As I indicated, and this is only a rough estimate, it would cost this nation only a million dollars a year. I have some evidence that this is not too far out because the Saskatchewan system, which was legislated in the spring and came into effect in September, allocated \$40,000 from their budget for this year, and if you compare the population of Saskatchewan with the population of the whole country you will see that it does not come out too far from a million dollars. I have their estimate and I assume that they have done some pretty close checking on it.

Mr. McCleave: I have one other question which arose subsequent to the start of our

conversation, Professor Linden. I am thinking of a case, say, where an arsonist destroys an industry thereby throwing many people out of work. It is not a matter of physical injury being caused but it is certainly a matter of economic dislocation. As a result of your studies have you any suggestions on what should be done in such cases?

Dr. Linden: Although we have not really gone into that it is one other thing one must think about. There are plenty of problems in the world but one devotes himself to the ones that are most pressing. It seemed to us that the most pressing problem had to do with people who were actually injured, had excessive medical costs and were out of work as a result of personal violence. Of course, many times a loss like that could be more serious.

Mr. Howe (Hamilton South): What about families of murder victims? I am thinking of a case in Saskatchewan. This is going to be larger than the \$40,000.

• 1150

Dr. Linden: They include the victims of murder, but fortunately not too many people are murdered. The question also arises, who is there to compensate? If somebody wipes out a family, a father and a mother and five little children—I am not too sure of the case—who is left to be compensated? They would not give the money to a friend because someone was murdered. Of course, if the husband were murdered then the wife and children would need a substantial payment. If a child is murdered our present law provides almost nothing. The same is true of a child being run over by a car. The law is quite cruel and heartless in that connection. It may seem as though these expenses would be much larger than in reality they would be when you come to assessing them and paying them out.

The Acting Chairman (Mr. Wahn): If you are finished, Mr. McCleave, we will have questions from Mr. Aiken followed by questions from Mr. Tolmie and Mr. Honey.

Mr. Aiken: Dr. Linden, what really lies behind this Bill, I believe, is the provision for compensation to the widow and children of innocent victims of murder. I think this is the first example that people think of when the compensation question is discussed. I was rather sorry that your investigation did not go into the field of murder. Was there any particular reason for this?

Dr. Linden: I am sorry. We did try and we had eight or nine names of people who had been killed in the city of Toronto this year and we wrote to their families but they did not fill out the forms. We wrote them again and they did not fill out the forms; then we telephoned them but they did not want to have anything to do with us. I think we had one questionnaire filled out. It is an unhappy sort of thing. We also have difficulty with the rape cases. People just do not want to have anything to do with it. It is going to be very difficult to ascertain those figures.

The other thing you have to realize is that some of these murder cases seem to be within the family, and the husband has killed his wife or the mother has killed one of her children, or something like that. Of course, there is the odd dramatic one where the wage earner is struck down; this is the kind of case that we most worry about. When you add them all up most of them are the kind where there really is no great financial loss suffered by any person dependent upon the person killed. Although we are shocked and horrified when the state moves to try to protect these people, there really is not very much that can be done in a financial way.

Mr. Aiken: Statistically have you made any effort to find out about these murder cases in Canada, that is, where there would be the need for some recompense for innocent victims?

Dr. Linden: To my knowledge we have not. It should be done. I think somebody should do it. Perhaps this Committee could delegate somebody to do that. In fact, you might have a scheme which would protect only the victims of murder and it may very well be that Mr. Cowan, whom I presume is the author of this order, is probably most concerned about that prospect. Perhaps everybody is most concerned about that. If the scheme is going to cost too much, it might be that the Parliament of Canada would say that they will compensate the relatives of the victims of murder but no one else. Let the provinces do that. Murder is obviously the most dramatic; but there are only 350 of these a year and that includes manslaughter, criminal negligence causing death, second degree murder, and all these other things. When you compare that figure with the number of crimes—rapes, robberies, woundings and assaults—it is an infinitesimal portion of all the kinds that go on.

• 1155

Mr. Aiken: Just one more question. Do you know of any study that has been made along these lines or would this Committee have to start from the beginning on it?

Dr. Linden: To my knowledge this is the only study of this type that has been done in this field anywhere. Most of the places that have enacted legislation seem to have done so without publishing the results of their cost. If you look at the British White Papers leading up to this, there does not seem to have been any statistical costing; they indicate the number of crimes but they are taking a very rough guess. I think this is one of the reasons why the British went into that scheme as a voluntary, gratuitous payment; if it got too expensive they could pull back. So they went into it very tentatively and cautiously and probably wisely, too, at least, until someone got some experience. New Zealand, for example, have had very few claims. I think the first year of their plan, and this is the first year, they had some seven claims. It was hardly expensive at all. In fact, they had so few claims that they expanded the coverage that was initially provided because they thought it would cost more money. It did not cost that much.

Mr. Aiken: If you assume that life insurance is a fairly general fact of life in this country, it might be very difficult for people to prove a case of financial loss.

Dr. Linden: Again it depends on who we are talking about. The sad thing we have discovered is that the victims of crime are poor and the murderers are poor. Both those who inflict the injury and those who have the injury inflicted upon them tend to be people who have not had the fortunate upbringing that most of us have had. I think that this is reflected in some of my other figures. Why is it that the hospital medical costs were paid for so few of these people. In any province we have virtually 100 per cent cost coverage in hospital and 90 or 92 per cent or so in medical coverage, but it is the balance who are the people who are getting beaten up, murdered, raped, and robbed, it seems. It is those people who need it the most that really do not get it from any other source. I think that would be the case with life insurance. I think you will find that of the people murdered a far larger proportion will be without life insurance than the rest of the public. It is a rather strange fact but I think you will find that that is so.

Mr. Aiken: Thank you. I might add just one comment. In our Estimates, in many departments, there are sort of *ex gratia* pensions paid to widows of long service people, and so on, for which there is no general public enactment. Would you suggest that this might be a proper way of establishing it, as a vote with certain criteria, without enacting legislation?

Dr. Linden: It is worth considering. I think the city of Hamilton has something like this. Is that not so, Dr. Howe? The municipality may, if it wishes, grant money to victims of crime in that municipality. I know in Toronto we had a case where this chap, Mr. Blank, went after a bank robber and was shot down and the city of Toronto gave his widow \$5,000, or something like that. It is always within the power of any government to give money to somebody whom they feel deserves it. But for myself, I am not too fond of *ex gratia* types of things. I am a lawyer and if you are going to have law, lay down the law and then everybody knows it. People have rights or they do not have rights and if they do not like the way they are treated they can appeal to a court or to some place else and get justice. However, as experimental thing it might be worth considering, as they did in Britain, but again, speaking of the British experience, it is not as necessary for us to experiment in this way.

• 1200

The Acting Chairman (Mr. Wahn): We will have questions from Mr. Tolmie, followed by Mr. Honey and Mr. Choquette.

Mr. Tolmie: Professor Linden, the British scheme, as I understand it, and as you mentioned, is non-statutory and does not list any specified offences; it is very flexible. The others such as the schemes of New Zealand, Saskatchewan, and New York, list offences. I was wondering what your opinion of the relative merits of these two schemes would be?

Dr. Linden: I do not think it matters a great deal. I think what I would like to have is a sort of a mixed thing where you list them. Certain offences are included but not to exclude any other types of offences. I think some of the plans have done that. They have listed some but included anything else that the board thinks is worthy of compensation. At least you have as much guidance as possible without withdrawing the flexibility that the agency that is administering the scheme should rightly have. I do not think there is a

great deal in it. The British although have a flexible scheme, really compensate for the whole range of crimes pretty well. There are long, long lists of crimes but when you look at them closely there is really only four or five major classes of crime; the rest of them are the very odd case which comes up.

Mr. Tolmie: Also, as I understand it, from the four jurisdictions, New York, New Zealand, Saskatchewan and Britain, the award of compensation does not depend upon any adjudication of guilt. In other words, a man can be charged and found not guilty and still the relatives of victims could be compensated. What is your opinion on that?

Dr. Linden: I think it is vital to have that because, for example, in about half or perhaps more of the crimes that are committed the assailant is never found. If he is never found and you had to depend upon the determination of guilt you would automatically exclude half the victims of crime. There does not seem to be much point in preparing a scheme for half the victims of crime.

Mr. Tolmie: Let us assume that the person is found and charged and still found not guilty.

Dr. Linden: That is one of the reasons my own personal preference is to use ordinary tort law, because the tort law standards of truth are much less than the criminal law standards. You do not have to go beyond a reasonable doubt; you have to go on the balance of probabilities. The accused does not have all the procedural protections that an accused person has if the charge is set out wrong or a little slip is made in spelling his name, and these ancient criminal law protections have been given to the accused because every accused used to be hung. All these protections were developed in the law to protect people from being hung. Would it not be applied in tort law so that you would have a wider range of availability, of responsibility, and this is one of the reasons why I prefer that. But there are some difficulties. Take, for example, the insane person or a little child who commits a crime. He is not really guilty of that "crime" because he is too young or he is insane and does not know what he is doing. He probably would not be guilty of negligence, tort, or potential wrongdoing either. But the British plan says pay these people if their offence is the result of insanity or drunkenness or something like that, as though they were responsible. That is another way of

ing it, but there is a problem. It depends on what your defence is. If the girl was raped but the accused was not the man who did it—she was raped by her previous visitor—and she should be compensated whether we convict a man or not. It cannot be determined solely on whether guilt is found. That does raise some difficulties.

The bigger problem is if the offence never occurred. Take the rape case which is most common. The lady says she was raped. The fellow says she consented. In such a case I would think the criminal trial would be terribly interesting and important because if, in fact, she consented she was a guilty party to what happened to her and she probably should not be compensated or, at least, her compensation should be reduced. I think most of the plans specify that if the injured person is partially responsible, the board or whoever is responsible for the decision can withhold compensation, reduce it, or deny it altogether.

• 1205

Mr. Tolmie: I believe this is the case in brief. If he is a very respectable person and if there is some possibility that there was consent or partial responsibility then the claim would be reduced accordingly. That is all.

Mr. Honey: Mr. Chairman, I have only a couple of questions. Dr. Linden, going back to the questions raised by Mr. Aiken, I wonder if you fully explored all the facts. I find it a little difficult to reconcile your findings that only 36 per cent of those who reported were fully recompensed by present medical coverage schemes with your statement that in Ontario something like 95 per cent of the people are covered. Did you explore this? Is there not some inconsistency there?

Dr. Linden: I will have to go back over these figures. There were some who were partially compensated and I have not included them here. There was a fair number of them.

Mr. Honey: You said that 36 per cent were fully compensated?

Dr. Linden: That is right. There were a few who were partially compensated and the balance was not. One explanation is that more poor people—people who are not covered—are the victims of crime because they are available where the criminals are, more or less. That would account for some kind of reduction.

Mr. Honey: Yes.

Dr. Linden: The other thing that may account for it that these questions are not being answered completely accurately all the time. Sometimes people do not know whether their expenses are covered or not. They may see a doctor and say they have incurred some expense, but they never see a bill; they never actually pay the money; the doctor may never send a bill or he may send the bill to the P.S.I. who in turn, pays it, but there could be a few people who did not know what happened.

Mr. Howe (Hamilton South): May I interject here and answer as a doctor? There are some companies that will not assume third party liabilities. For example, the A.M.S. will not pay a third party. I can recall having a patient who had been seriously injured in a car accident and A.M.S. would not pay the expenses because there were already two parties involved and they would not act in connection with the third party—am I using the right expression—liability?

Dr. Linden: Yes. That is another possibility. There are others but that covers it. I did a study in automobile accidents as well and found that although it seemed a lot of people were covered, when we looked at the figures somehow the people involved in these accidents were not covered or were not aware of their rights and they did not make claims. I think there is a certain amount of error in the information from the people who respond.

Mr. Honey: You have not had an opportunity to analyze this?

Dr. Linden: Not fully.

Mr. Honey: Just one other thing, Professor. Would you feel that a scheme or plan that might be set up federally-provincially or provincially, as the case may be, should have particular reference to victims of rape? Assuming the assailant was financially responsible and the victim took her rights to a civil court, or submitted herself to civil court, in some cases she might well have substantial recovery for health, psychiatric treatment and the intangibles that might arise from that. Would you feel that this would be a proper area for government compensation in addition to the...

Dr. Linden: Certainly not in addition to...

Mr. Honey: Not in addition to her rights; I only used that as an example. I mean for the girl whose assailant was impecunious. Would

you feel that she should take her claim to the government board and would this be a proper area of compensation?

• 1210

Dr. Linden: I think it should be done in the same manner as in an automobile accident. If you have a defendant who is insured, you have a right of action against him and you bring it and you recover your money. No one worries about it. Every province in this country and many of the United States have created unsatisfied judgment funds as a sort of a backstop for the impecunious or uninsured defendant. The same sort of thing could be done in this area. If somebody does have money—not a man of straw—then the person who is attacked by him should be able to sue him and recover as the law provides. If he recovers there is no need for assistance or, at least, it should be taken into consideration or deducted from any recovery that the state would give him.

The other problem is the time lapse between the time of injury and the time of the court case—if it comes to court—or even the time of the settlement, which may be six months, nine months or a year later. There is a lot to be said for a scheme which would compensate immediately the person who suffered the crime and then the state could bring action on behalf of that person by subrogation rights—many of the statutes have included this subrogation right—against the assailant and recover for themselves the money they paid out. If, of course, they recover more than they paid out—as the plaintiff would probably be involved in this—the plaintiff gets the balance. If the state takes back its share, it would then only be paid on account. But this is going to be very rare. There are not that many people who commit crimes who are able to pay. The 4 per cent figure is high because these construed offences that we studied are those where the accused was caught. We did not study those cases where the accused was not caught because there could be absolutely no recovery if he were not caught. This is the experience. There are obviously 4 per cent of the criminals who have the money to pay and it is a pretty small group.

Mr. Honey: I agree with what you said. I want to make sure that we are in agreement because it would be a realistic approach to have the victim submit her claim to the state forthwith and have it adjudicated. Then, the state certainly would be in a much better

position to determine whether or not it should take subrogation rights against the assailant.

Dr. Linden: Yes. Of course, it could be done in a manner similar to the settlement of claims under the Ontario Hospital Insurance Plan.

Mr. Honey: Yes.

Dr. Linden: It could be done that way or, again, you might give the plaintiff the option to do it in whatever way he wants. If a person prefers to exercise private rights, he should be permitted to do so. If he prefers to have his money immediately, pay his expenses and then join with the state in bringing an action against the defendant, he should be free to do it that way.

Mr. Honey: Thank you.

[Translation]

Mr. Choquette: Mr. Chairman, I would like to ask a supplementary question.

Mr. Linden: I will try to understand you.

Mr. Choquette: In the case of rape—which is of particular interest to me as I am a bachelor and always exposed to adventures—I would like to know if the victim of such a crime, who does not require treatment from a doctor or a psychiatrist, is necessarily subject to a moral injury. In that case would the moral injury alone provide the basis for indemnity? In fact, I notice on page three of your brief:

[English]

Suprisingly not all the victims of crimes, of violence incurred financial losses. For example, a rape victim might not require or seek any medical attention...

[Translation]

So, if no care is given by psychiatrists or doctors, the fact remains that there is a serious moral injury. To your way of thinking, could this injury not serve as a basis for compensation?

Mr. Linden: I will not be able to answer you in French.

[English]

I think that there should be compensation for the woman who goes through this horrible experience. A married woman could be raped by three men; they could walk away and she

would come home, terribly unhappy and terribly miserable, and yet not be sick, not get pregnant, but have mental suffering. Nevertheless, this is a dreadful experience, and it is in an area where the state could rightly feel some obligation to compensate this woman for the shock. It would not involve a large sum of money—that is the important thing—but the state would, in effect, be saying: “We feel badly, we feel sorry, here are a few dollars. We hope it will make you feel a little bit better. Go away to Florida for a week and try to forget”.

• 1215

[Translation]

Mr. Choquette: I would like to ask one last question. If it is not possible to trace the author of the crime, what kind of evidence would you ask of the plaintiffs?

[English]

Dr. Linden: The same as we now have. I think the province of Quebec has an Unsatisfied Judgment Fund. The plaintiff says he was injured when he was run over by a car—a blue car—which escaped. He must prove to the satisfaction of the court that this did happen. Some people lie, but usually the truth will come out. He will have a witness—there might have been somebody with him—he will show the bruise or the scar and he must have been at that spot. His story will be, “yes, it was a blue car with licence number 342”. The same sort of thing that would occur with a crime when a plaintiff could say, “A man with a mask came up, grabbed my purse and hit me over the head and ran away”. You look at that person and think, why would she make up a story like this? You can see her scars, you can see the people to whom she ran afterwards to complain about it, you can see the policeman who investigated and you make an assessment. Most of the time you can tell if somebody is lying, I think.

[Translation]

Mr. Choquette: And the only abuses that could be committed would be related, for instance, to wallet thefts. Someone could say, “I had \$500 in my wallet. It has disappeared.” He could make a declaration under oath, “I swear I had a wallet containing the sum of \$500 or \$1,000. It has been stolen. I do not know who stole it, but it has disappeared.”

This would then offer an opportunity for a considerable number of abuses. I am only

submitting this case to your attention to find out what your reaction is, because I know that any kind of legislation can lead to enormous difficulties.

[English]

Dr. Linden: If you have an Unsatisfied Judgment Fund, for example, the state or the province defends the unidentified person—he is gone—and says, “We defend him. We deny your story—we do not believe it”. The plaintiff rises and he tells his story. The defendant’s lawyer stands up and says, “All right, where did you get the money? You only make \$50 a week. What were you doing with \$500 in your pocket?” He says, “Somebody gave it to me”, or “I found it”. He will not be believed. If he is a professor or a lawyer, who normally has \$500 in his pockets, he may be believed. He has no reason to “con”—to lie—to the court for \$500.

I admit there is the possibility that someone may be able to cheat on a few dollars, but most people are not going to go to this much trouble. If you want to steal, there are easier ways to steal than to go before a board and say you are a victim of crime in order to get \$500. The risk is much greater than just going out and hitting somebody on the head taking the money and running away. There is this danger, of course, but I think we have to trust our judicial process to be able to discover those liars and crooks, at least, in most cases. Because we get cheated out of a few dollars is no reason to deprive all the rest of the honest claimants their right to recovery.

[Translation]

Mr. Choquette: Thank you very much.

[English]

Mr. Pugh: Dr. Linden, I just have a couple of points here. Do you see these claims being said out of general revenue or do you see revenue from some other source making up the fund?

• 1220

Dr. Linden: It is terribly hard it is not the sort of thing you can insure against. It is not the same as in the Unsatisfied Judgment Fund, for example, where the money comes from licence fees. There really is no group of people upon whom we can fasten an insurance premium. Some of the plans stipulate that the accused person should be made to pay the money back, if he can, of course, and that money be used as part of the fund. It has

been recommended by some scholars that they should have these people actually work to earn money while in jail, if that is where they are, in order to pay it back to the individual who has suffered. There are sociologists who argue that this would be a better kind of treatment for the criminal. They feel that rather than have the criminal pay his debt "to society" and feel he is no longer obligated, he really should pay his debt to the person whom he injured or the wife of the person whom he killed.

Mr. Pugh: Just on that point. If there is an injury, through a criminal act, it is quite possible that the person doing the injury might go to jail, pay his job to the state and still be subject to a civil action in the court and have to pay the full shot for any damages that might be incurred. I would follow the reasoning on that.

It would seem to me that one of the things against the implementation of such a plan would be the same as the one that probably faced most of the provinces when starting their Unsatisfied Judgment Fund. They started out compensating for personal injuries, only to a limited extent of course, not damage to the car. Do you think that would be a good way to get started on this?

Dr. Linden: Yes, I think that might be a good way. It would be a way of regulating and controlling. It does not hurt to start out relatively small.

Mr. Pugh: Many of the funds started out with a very small amount. They increased it to \$10,000 per life. I think the province of British Columbia now pays \$30 thousand or \$50 thousand.

Dr. Linden: \$50 thousand in British Columbia.

Mr. Pugh: \$50 thousand under the TVIF, the Traffic Victims Indemnity Fund.

Dr. Linden: Yes, and they have expanded now into profit, losses and this sort of thing. I think it is wise to start relatively small and provide limited compensation. Then, if you see the plan is working well and the funds are available, it can be expanded.

Mr. Pugh: I wonder if it is the duty of the state to actually provide this compensation? I am only going back to the arguments put forward in the hanging legislation, or the taking away of the noose. There was a good deal of talk about the duty of a citizen to come to

the aid of the police in a time of danger. Also, the fact that under the law, if he was requested by a police officer or a peace officer, that he had to come or else face the consequences. Would you say that this would put a duty on the state to compensate for any damage or loss of life that might have been incurred there?

Dr. Linden: I have written an article about that particular example in which I said that it seems awfully strange that you require somebody to come to the aid of a police officer, and then do not provide compensation for him.

Mr. Pugh: Are you in favour of it on that basis?

Dr. Linden: Yes, that is true, but in the province of Ontario, for example for a long time—people somehow were making statements while not being aware of this—we have had legislation in our Workmen's Compensation Act, Section 122, that says if a man is requested to help a police officer under section 110 of the Criminal Code, and he proceeds to do so, he is then a servant of the Crown, an employee of the Crown, during the time that he assists the State. And if he is injured then he is injured on the job and he is entitled to Workmen's Compensation benefits just like an industrial worker or a factory worker. And he comes in; he gets his full medical and hospital cost and income loss, just like a workman and that, I think, is excellent legislation.

Mr. Pugh: To my knowledge this was not one of the arguments used during the hanging legislation. The debates took place in the House on that point; it is a very valid one.

Dr. Linden: But, again it is a very limited situation, of course. The number of victims of crime injured while helping a police officer to apprehend someone is insignificant. Whenever such things happen they get into the newspaper because they are so rare, because this is really something different.

You do not get raped helping a police officer, normally you do not get robbed helping a police officer; there are a host of crimes that can never happen to you when you are helping a police officer. But at least those should get compensation. In Ontario we have it and actually they have passed a new law that has changed it a little and expanded this particular aspect because at least in those areas, where somebody is helping the state, I think it is impossible to deny them coverage.

1225

Mr. Pugh: Just changing the point, I noticed in your brief you have set out the British system and the total cost and the growth factor on it. Would you say that the damages awarded or the quantum in Britain might be a good deal less than the normal awards handed out in this country, particularly with regard to the occasions on which it takes place in Ottawa?

Dr. Linden: I think, generally, probably they would be less. It is awfully hard to judge these things but I think people in Canada generally earn more so that if they are injured and out of work they lose more. I think probably our hospital and medical costs would be slightly more.

Mr. Pugh: The head of a family who is making quite a packet might knock the fund out of shape for quite a number of years.

Dr. Linden: Again it depends on the size of your fund. I think we were talking earlier about a limit; we can always make a limit of \$25,000.

Mr. Pugh: Then in your opinion it would be a good idea to start this fund and set the whole thing out with limits for a start and then be prepared to amend those limits as required.

Dr. Linden: I think so; I think you should allocate a certain amount of money. This is what they did in California, for example; with their plan they said, we think it is a good idea but we do not have too much money, we will lay out \$100,000 for this purpose, and it created a very limited plan, and to my knowledge that fund has not expanded.

There was the same situation in Saskatchewan. They said: "Well, \$40,000. We will do that and see what happens. If we do not use it up we can expand it a bit. If we use it up rapidly, we had better have another look at it and tighten down a bit". I think this is perfectly reasonable in an experiment like this.

The other way of handling it is you might at first not give pain and suffering, for example. Or, you might limit it in cases of death to \$5,000 or \$10,000. In cases of disability you might pay up to \$50 a week, or something like that, but no more.

There are ways of restricting it. The best way, of course, is by means of a deductible feature and that is why I gave you all those

figures about so many people who just lost \$1 to \$49. They went to a doctor or they went to a hospital overnight and that was it; they went to work the next day or they lost a couple of days work.

If you look at these people, you will see that a great many are properly looked after under the present scheme. A large number of others lose only \$30, \$40, \$50 or even \$70 or \$80 and not really much for us to be concerned about; it is those that start getting up over \$100, \$200 or \$300. A good way of starting is to have a deductible of \$100, say, or \$50, or you could start at a higher figure—\$200—and then reduce the deductible I think you should try to weed out all the little claims because you do not want to bother paying a fellow back \$10 for a doctor's bill.

Mr. Pugh: Under a universal medical scheme your prime contributor would be the insurance funds in the provinces. I mean, it would get rid of all that. With the exception of death do you see most of the claims being of a medical nature; I mean the bulk of the money?

Dr. Linden: Oh, the money? No. The serious losses are when a fellow is incapacitated and cannot work. The money starts to build up when the breadwinner is out of work for six months or a year, or perhaps for the rest of his life; a fellow is blinded, or something like that, as the result of somebody throwing acid on him.

The big losses are where you start getting into income losses. Usually, hospital bills or doctor's bills are not going to go up, even in the most serious crime to me, medical expenses are relatively cheap in these days. It was like that in the automobile accident cases, too. These are not the largest numbers; these are not the serious cases.

There are other things you find; doctors often waive their fees. It is the same with hospitals; welfare people do not really have to pay up. So the key, then, really is the people who are incapacitated and lose their means of livelihood.

Mr. Pugh: Thank you.

The Acting Chairman: Mr. Ryan and then Mr. Choquette.

Mr. Ryan: Professor Linden, welcome to Ottawa from the riding of Spadina.

Mr. Choquette: One more vote for you.

• 1230

Mr. Ryan: I was going to ask the Professor whether there is any great criticism that he is aware of in Britain of their system. Are there any hard feelings about it that have been expressed?

Dr. Linden: All I can see coming out of Britain is fantastic praise with everybody writing articles and shouting to the world to look what they have, what a marvelous thing, and people all around the world going there to visit and study this plan. In fact, I plan to go there myself, this spring or summer and watch the board in operation just to see how they do these things. I have heard no bad reports but again it may just be that the authors I read are in favour of it. I am sure there will be some grumbling in specific instances by people who feel they have not been fairly treated.

Mr. Ryan: What about fake claims? Have they had bad experience in that way in Britain?

Dr. Linden: Well, there has not been anything reported that I know of but, there are always going to be a few people that are going to get away with something. But there has not been any great rush; as I indicated, they only had 4,000 claims in two years. Actually they paid out only about \$2,000. So there were a number of people they did not believe, or they really did not have the crime committed against them or they just did not suffer enough loss, or something like that. Not everyone who claims gets it; the board is weeding out some, but whether it is as the result of fraud—I would think that would be a big factor.

Mr. Ryan: I think you are to be greatly complimented for the interest you are taking in this area. You have returned fairly recently from California, too, and have had some experience inside of what they are doing down there. How is their system working so far as limiting it to permanent damage is concerned?

Dr. Linden: Well, it is almost insignificant from what I can gather. They have hardly any claims at all and it is not really a proper plan. They give hardly any money to anybody and, as you know, \$100,000 for a population as large as Canada is not very much and I do not think they even expanded it because their limits are so tight. If you look at their legislation it is just the same kind of bill as this; it does not really lay out very much.

Mr. Ryan: You are just getting about two inches of print here.

Dr. Linden: I have their bill before me. They pay money to a family of any person killed and to the victim and family, if any, or any person incapacitated as a result of a crime of violence if there is need for such aid. So, you shrink right down to a very small number of victims of murder and those who are incapacitated—I assume that means permanently—and then they have to establish some need.

Mr. Ryan: Yes; they would take into consideration any personal insurance coverage.

Dr. Linden: Of course.

Mr. Ryan: What about Britain; is that in effect there too? Do they take into consideration personal insurance coverage?

Dr. Linden: No, their standard is the tort standard, primarily, except that it is applied by a board. A millionaire who gets hit over the head can come in and say, "I have been hit over the head" and receive an award. I think it is a factor they consider but it is not a significant thing.

Mr. Ryan: In a Canadian plan you would recommend a normal scale of civil damages, take it?

Dr. Linden: Well, I think so with a maximum perhaps.

Mr. Ryan: With a maximum. What about personal insurance coverage? Would you take that into consideration?

Dr. Linden: I think you would have to deduct that. I would not want to be paying a lawyer \$1000 or \$2000 a month out of general revenue. We should establish a basic minimum and that should be all that the state should provide. It should not allow these people to continue living in the lap of luxury, as does tort law—perhaps rightly—and you have to restrict it to some degree, because, after all, everyone else is paying for this.

Mr. Ryan: I suppose there would have to be some agreement between the Federal Government and the provinces to standardize a plan for the country?

Dr. Linden: That would probably be the best way to do it. If the federal government wished to it could move by itself under the

criminal law power, and of course, the province could move by itself. Several of them have, and have continued to do so.

Mr. Ryan: And even a municipality can move.

Dr. Linden: Yes; and even individuals; if you want to give a victim of crime one thousand dollars you can do so. I am sure Church organizations and charitable organizations do this.

Mr. Ryan: What of the citizen volunteering to assist a police officer? You have covered the situation where he is commandeered. When a citizen volunteers should he likewise receive...

• 1235

Dr. Linden: Definitely; and I have also argued that should happen not only when assisting a police officer. What happens if it is someone other than a police officer who is trying to prevent crime and/or to apprehend someone? You see somebody being beaten up, you run over and try to help, and you are whacked over the head. I think the individual should be compensated, too. This is a good samaritan type of thing.

Mr. Ryan: Is he not willingly accepting the risk in this case?

Dr. Linden: I do not think so, in that case. If you are rescuing somebody, you are a hero; you are not a fool for trying to assist. It is not like jumping in front of a train. In a case like that, of course, you are voluntarily accepting the risk.

The law over the years, as you know, Mr. Ryan, has been that one should not be a good samaritan—"Who told you to be a good samaritan? If you are you are a fool."

Mr. Ryan: Yes.

Dr. Linden: But in recent years the courts have said that this is not really volition. The sensible person, seeing this happen has to help. We are all practising our religious upbringing and this leads us to do it. It is not a case of volunteering to the risk. You just feel that you have to help, and you do it. If you are injured in so doing I think the state should help.

Mr. Ryan: Thank you, Dr. Linden.

The Acting Chairman: We are nearing the end of our allotted time. I believe Mr. Choquette has one further question.

[Translation]

Mr. Choquette: Professor, do you agree that the judge who exercises criminal jurisdiction should also pass judgment so that he himself fixes the amount of indemnity to be given, or would you prefer that the strict division between the two jurisdictions be maintained?

There are cases, I believe, where it would be quite easy for the judge exercising criminal jurisdiction to say, "The case is perfectly clear; you have stolen a certain amount of money." And again, "Certain damages have been caused and as a result you are a convicted criminal. Furthermore, I condemn you to pay such and such compensation. If it is beyond your means, the government itself will pay the indemnity."

[English]

Dr. Linden: That is the problem we have in this country. I know, for example, that judges in criminal matters are empowered to award civil damages as well as to send a man to jail and fine him. The common law used to do this years and years ago, but somehow we have got away from that. We have separated the functions of the criminal law and the civil law and certain principles are applied. You might try this sort of thing. I, too, decry, as you do, the waste of resources in having an automobile accident case tried in the criminal courts, with all the lawyers, witnesses and policemen present, where the man is fined fifty dollars, and the next month having to go through the whole thing again, with all the witnesses and lawyers and the jury.

Mr. Ryan: They have a hard time telling the same story twice.

Dr. Linden: That is right. There is a great deal of waste of resources.

I would like to see some experimentation with this, but the difficulty is that we have this provision and the separate standards, and the accepted methods of proof. To attack it in this situation and not to touch in in all the other areas may be unwise. You could do it on an experimental basis. You could easily pass this to the magistrates. You could try it, anyway.

I am very intrigued by the idea, but again, the problem is much broader than this.

Dr. Howe (Hamilton South): I have one further question. You suggest that a man injured helping a policeman be compensated by the Workmen's Compensation Board?

Dr. Linden: He is now.

Dr. Howe (Hamilton South): As a policeman?

Dr. Linden: Yes.

Dr. Howe (Hamilton South): On what are they going to base his salary? He has received no salary as a policeman. Will it be based on his regular job, at which he was not working for the time he was injured, or on what his salary would have been had he been a paid policeman?

Dr. Linden: No. They establish a minimum amount and they say that in any case he gets so much. They have a maximum, under workmen's compensation, of 75 per cent of \$6,000. Within that they take a certain salary, as I understand it. If the man who has helped the policeman is a bricklayer who makes one hundred dollars a week he collects as though he were a policeman, but on the basis of his earnings as a bricklayer.

• 1240

Dr. Howe (Hamilton South): You mean the Workmen's Compensation Board of Ontario will acknowledge this and actually pay it?

Dr. Linden: It is in the legislation. If they do not pay, appeal to the courts will force them to do so.

I have never heard of a case where it has happened. I do not think anybody knows about it. People go around saying: "Is it not a horrible thing? People can help police officers, and are required to under the law, and nobody pays them". I have seen that said in quite a few law reviews, and by people who should know better. This legislation is there, and it has been there for a long time.

I have tried to find out how it got there. It does not really seem to fit. But someone somewhere—some civil service department, or some attorney general must have thought this was a good idea and slipped it in. And he slipped it in so quietly, apparently that no one knows about it.

Dr. Howe (Hamilton South): And it has never been tried out?

Dr. Linden: No one knows. I do not know if it has ever been tried. I wish more people knew about it and took advantage of it.

Mr. Ryan: There are no reported cases, is any event?

Dr. Linden: Not that I know of; and I have looked and looked. I could not find any.

The Acting Chairman: Gentlemen, if that concludes the questioning I wish, on your behalf, to thank Dr. Linden for his research and the knowledge that he has made available to the Committee. It has been an extremely interesting session and I know the Committee will profit greatly from the information which has been given to it.

I have one very small item of business before we adjourn. Professor Edwards of Churchill College, Cambridge, had been invited to give evidence on this subject. We have a letter from him saying that unfortunately he cannot appear because of other commitments. He has, however, prepared an article on the subject, and this has been distributed to the members of the Committee. The article is entitled "Compensation to Victims of Crimes of Personal Violence". If the Committee agrees we will file it as an exhibit to our record.

Some hon. Members: Agreed.

The Acting Chairman: Has anyone any other item of business before we adjourn?

The Chairman of the Steering Committee will set the time of the next meeting. I am not sure when it will be.

There is a question whether or not we have any further witnesses to hear on this particular subject. You will be advised as soon as that decision has been made.

The meeting is adjourned.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967-68

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 17

TUESDAY, FEBRUARY 27, 1968

RESPECTING

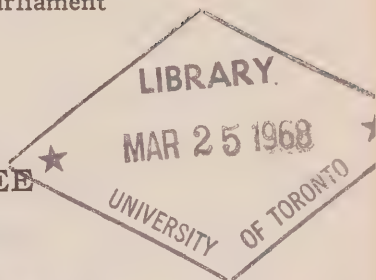
The subject-matter of Bill C-96,

An Act respecting observation and treatment of drug addicts.

WITNESS:

Dr. Peter Roper, President, The John Howard Society of Quebec,
Incorporated.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968



STANDING COMMITTEE
ON
JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,	Mr. Howe	Mr. Pugh,
Mr. Cantin,	(<i>Hamilton South</i>),	Mr. Ryan,
Mr. Choquette,	Mr. Latulippe,	Mr. Stafford,
Mr. Gilbert,	Mr. MacEwan,	Mr. Tolmie,
Mr. Goyer,	Mr. McCleave,	Mr. Wahn,
Mr. Grafftey,	Mr. McQuaid,	Mr. Whelan,
Mr. Guay,	Mr. Nielsen,	Mr. Woolliams—(24).
Mr. Honey,	Mr. Otto,	

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

TUESDAY, February 27, 1968.

(19)

The Standing Committee on Justice and Legal Affairs met this day at 11.10 o'clock a.m. The Chairman, Mr. Cameron (*High Park*) presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Choquette, Forest, Gilbert, Goyer, Guay, Honey, Latulippe, Otto, Tolmie, Wahn and Whelan—(13).

In attendance: Dr. Peter Roper, President, The John Howard Society of Quebec Incorporated.

Also present: Mr. Milton Klein, M.P., sponsor of Bill C-96.

The Committee resumed its study of the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts.

The Chairman asked Mr. Klein to introduce the witness. Dr. Roper read his brief.

At the suggestion of Mr. Honey it was *agreed*, that the graphs and statistics attached to Dr. Roper's brief, be appended to this day's evidence so that it will be readily available to members. (*See Appendix "D"*)

The Committee proceeded to the questioning of the witness.

The questioning of the witness being concluded, the Chairman thanked Dr. Roper for his brief and for the manner in which he answered questions.

It was moved by Mr. Whelan, seconded by Mr. Wahn,

Resolved,—That reasonable living and travelling expenses be paid to Dr. Peter Roper, who has been called to appear before this Committee on February 27, 1968, in the matter of Bill C-96.

The Chairman read correspondence from the Attorneys General of Newfoundland and British Columbia respectively, and the Committee *agreed* that same be filed as Exhibit, (*Exhibit C-96-13*); and that the article by Professor Alan W. Mewett of Osgoode Hall be filed as *Exhibit M-20-2*.

At 12.45 o'clock p.m., the Committee adjourned to the call of the Chair.

D. E. Levesque,
Acting Clerk of the Committee.

EVIDENCE

(Recorded by Electronic Apparatus)

Tuesday, February 27, 1968.

Mr. Whalen: I so move.

Mr. Wahn: I second the motion.

Motion agreed to.

The Chairman: Dr. Roper, the meeting is now open for you, sir.

Dr. Peter Roper (President, The John Howard Society of Quebec, Inc.): Thank you, Mr. Chairman.

I repeat my statement in the first paragraph of my brief that I am pleased to have the honour of your invitation to appear before you and I am very grateful for the opportunity to make comments on this bill.

The Chairman: May I suggest, Dr. Roper, that you read your report dated in January so that members, if they have not already read it, will be able to go over it as you are reading it and be in a better position to ask their questions.

• 1115

Dr. Roper: Thank you, Mr. Chairman. I will do that.

1. The intent and subject-matter of the bill is considered to be a step forward in our efforts for penal reform and towards more effective control over the problem of illicit use of drugs. As the law stands at present, persons found guilty of offences under the Narcotic Control Act can only be provided with needed treatment after they have been sentenced and then only in a Penitentiary.

2. Bill C-96 would allow treatment as needed to be given in any suitable hospital or other treatment center without the person having to be previously convicted and thus acquiring a criminal record.

3. This change in the law would be of particular significance in the young or first offender without criminal intent. The possibilities of obtaining a pardon or expunging a record after conviction remain somewhat remote alternatives.

1110

The Chairman: Gentlemen, we have a quorum, and we will continue the Committee's hearings on the subject-matter of Bill No. C-96, An Act respecting observation and treatment of drug addicts.

Mr. Milton Klein, who sponsored the bill in the House, is here. Our witness is Dr. Peter Roper, President of the John Howard Society of Quebec, Inc. I am going to ask Mr. Klein to introduce Dr. Roper.

Mr. Klein: Thank you, Mr. Chairman. The introduction will be very informal, gentlemen.

All one needs to say about Dr. Roper is that his association with the John Howard Society makes him eminently qualified to appear before this Committee. I do not know how many members have had the opportunity of reading the brief but I think the brief presented by Dr. Roper is a very excellent one indeed.

Dr. Roper was with the Air Force for some 19 years and during that time had some vast experience in the Far East with respect to the effects of drugs and drug addiction. He is now practising psychiatrist in Montreal, and I am sure we will all benefit greatly from the evidence which he will submit to this Committee this morning. I am very pleased to present to you Dr. Roper.

The Chairman: Thank you very much, Mr. Klein.

You have all received a copy of Dr. Roper's statement which has been circulated among all the members. In addition, Dr. Roper has sent us other documents which have been filed as exhibits; C-96, 6-7-8 and 9. Before calling on Dr. Roper, I would like to have the usual motion, namely, that reasonable living and travelling expenses be paid to Dr. Peter Roper, who has been called to appear before this Committee on February 27, 1968, in the matter of Bill C-96.

4. The observation and treatment of drug offenders envisaged by this bill appears to range from custodial care in hospitals to voluntary attendance at other treatment centers including out-patient clinics and physicians' offices.

For certain cases treatment within penitentiaries would presumably still have to be provided. Unfortunately at present in this country such treatment facilities do not adequately exist. Until they are so provided the practical results of this bill will be nullified. Mention has already been made to the Committee by Miss Macneill (minutes page 203) that many hospitals will not admit drug addicts. The same problem arises in out-patient clinics and doctors' office practices. Drug addicts are looked upon as the "Untouchables" in comparison to other patients.

5. The difficulty of providing adequate and effective treatment to drug offenders is well known throughout the world, but the subject-matter of Bill C-96 may well provide the impetus and direction needed for this country to be in the forefront of legal reform and treatment advance in this connection.

6. Before making any specific suggestions regarding improvements in management and treatment of the drug offender an attempt will be made to summarize the main problems which have to be taken into account.

7. Summary of problems with drug offenders.

(a) *Definition of terms.* The term "drug addiction" is often difficult to define and even more difficult to determine. Some illicit and harmful drugs are supposedly non-addictive. The term "drug abuse" might be used instead. This could be defined as the use of drugs without the legally required prescription and proper supervision of a duly qualified physician.

(b) *The mental state of the drug abuser.* The addict is the most deceitful, conniving and plausible person. As a "con artist" he is supreme. Even the worst alcoholic is in a different league. His drive for the drug is paramount; it is greater even than hunger. He will stop at nothing to satisfy his need. Persons vary in their vulnerability to the addictive process. In some it can be seen as a symptom of a previously present men-

tal abnormality which in itself need treatment. The effect of drug abuse may be to cause further mental impairment of a more or less permanent nature. The complicated clinical picture of the antecedent or resulting mental effects together with the overriding strength of the habit pattern make accurate diagnosis and planning of treatment extremely difficult.

(c) *The poor results of treatment.* This has been well described to the Committee by others. It seems in part at least due to—

(i) Difficulty in recognition of underlying cause or illness, with failure to provide adequate treatment for it.

(ii) Inadequate staff and/or facilities at places where treatment is provided.

(iii) Refusal to admit to hospital or denial of treatment facilities to drug offenders.

(iv) The drug abuser trying to stop the habit is usually penniless.

(d) *Involvement with crime.* This includes:—

(i) "Organized crime". The supplier and pushers are in business. They will stop at nothing to achieve their ends. Heroin has been mixed with marijuana or injected into intoxicated persons in order to 'get them started'.

(ii) The criminal propensity of drug abusers. Many have a history of crime beforehand.

(iii) Crime usually has to be committed to obtain illicit drug supplies either by financial proceeds or as a payment for 'services rendered', e.g. pushers, traffickers.

(iv) The influence of a strong "sub-culture" with ties and pressure to continue the drug abuse and criminal activity.

(e) *The attitude of society.* The attitude of the rest of society to the drug offender is usually one of avoidance or rejection. This is not only because the behaviour (like that of sexual perverts and the insane) is abnormal and not understood, but also because a basic instinct to preserve the species may be aroused in others. The strength of this reaction may best be seen in isolated and more

primitive groups. The killing of an insane woman by her family in an Eskimo community in 1967 was thus looked upon as 'normal'. In the sophisticated urban communities this basic reaction is more disguised but may still have its effects. This is a particular problem for the younger age group particularly where the parents or others in authority have been misled into avoiding their responsibilities and do nothing to prevent the commencement of drug taking.

8. *Suggestions regarding Treatment Facilities for the Drug Offender.*

Account must be taken of the competitive demands of other community needs, the high cost of setting up any large drug research and treatment centres and the so far disappointing results of treatment. It would seem more reasonable at this time to try to make our present facilities more effective and at the same time gather as much pertinent information as possible in a scientific manner. The following suggestions are made up with this in view

- (a) No hospital or treatment centre, particularly if receiving public monies, should deny admission or treatment to a person solely because of drug abuse.
- (b) In penitentiaries treatment programs should be as good as those available in the community.
- (c) All psychiatrists (and later perhaps other physicians) in Canada should be asked through the Canadian Psychiatric Association to help where possible in a program for the treatment of drug abusers and research into the problem. This would be organized according to the plan in appendix "A". Every doctor cooperating in this project would be provided with forms A-1 and A-2. Form A-1 would be the record of attendance of a particular patient; this would be filled up and returned by the doctor to obtain research money (e.g. \$10.00 per visit at office and \$3.00 a day at hospital). Form A-2 would also be filled up by the doctor for each patient to give the statistical information so necessary for proper evaluation of the extent of the drug problem and relevant factors in management and treat-

ment programs. Both these forms would be sent to a federal drug research centre which would provide the funds for the doctors and collect and correlate the data. Other sources of information which could be tapped in a similar manner might be the social agencies, the police and the legal and penal services. The relevant information would be available at municipal and provincial levels as necessary.

- (d) Lists of available treating physicians to be kept by social agencies (e.g. John Howard Socs.)
- (e) Persons found to be in need of treatment by the Courts should be referred to the relevant social agency so that treatment recommendations could subsequently be used in decisions regarding disposal.
- (f) The treatment facilities and arrangements should be known by all legal and prison authorities and used when appropriate.

9. *Prevention*

In addition to the improvements in treatment facilities the strongest possible measures should be taken to reduce the drug problem in this country. These should include:—

- (a) Community efforts should continue in an effort to broadcast the dangers of drug abuse and combat the lax attitude towards it shown by some persons in authority.
- (b) The work of the police in combatting organized crime should be reinforced and efforts should be made to break up the sub-culture groups where drug abuse and other criminal activities are prevalent and so prevent as much as possible the spread amongst, particularly, the younger and more vulnerable members of society.

10. In a final comment on Bill C-96 it can be observed that penal reform can only be achieved if a fair attitude is maintained. To provide treatment where indicated instead of punishment is an advance, but to avoid punishing where appropriate may be dangerous. There is a growing body of scientific evidence that some forms of punishment can be very effective in bringing about a change in abnormal behaviour as well as protecting others in the community.

• 1125

The Chairman: Thank you very much indeed, Dr. Roper. I was wondering if at this time it would not be appropriate to agree as to whether the addendum to Dr. Roper's statement should be filed as an exhibit or as an addendum following his presentation. I think it probably would be better as an exhibit so that it would be available in the records of the Committee. I would be very glad to have an expression of opinion. You will see at the back of the statement what I mean. What is your opinion, gentlemen? Do you think it should be an exhibit or an addendum? Mr. Honey?

Mr. Honey: I think an addendum is most readily available to members of the Committee because it is part of the report.

The Chairman: Thank, you, Mr. Honey. Are there any other expressions of opinion? Is it agreed? Then this will be filed as an addendum to your statement, Dr. Roper.

The meeting is now open for questions by members of the Committee addressed to Dr. Roper. Mr. Whelan?

Mr. Whelan: I have just one question on what you said about having them go to psychiatrists. Are there enough psychiatrists available for this now? Most people complain that they have to wait two, three or six weeks for appointments with psychiatrists.

Dr. Roper: I think, Mr. Chairman, that there are enough psychiatrists but I think there is the great problem of the fact that the drug addict is not a very popular patient to have. It is very difficult, of course, to treat a drug addict. As I have read so far in the evidence of this Committee, the results are poor even with all the facilities available and I think it is fair to say that under those circumstances a psychiatrist will be more likely to say to the patient who comes with a drug problem that he is sorry but he cannot help him; that he does not have either the facilities or the experience and will refer him to a hospital.

Mr. Whelan: Doctor, you say on page 3, paragraph 8(c):

All psychiatrists (and later perhaps other physicians) in Canada should be asked through the Canadian Psychiatric Association to help where possible in a program for the treatment of drug abusers and research into the problem.

On what do you base your answer that there are psychiatrists available when it is nearly impossible to get appointments with them?

Mr. Honey: Have you tried, Mr. Whelan?

Mr. Whelan: How do you know I am not going steadily after being around here for a while? I agree with the statement a certain man made that you have to be an idiot to be here in the first place.

I have had people in my own constituency complain that it is nearly impossible for them to get appointments, because these people are working long hours. I know some of the doctors in my own area and they put in nearly as long hours as we politicians do.

• 1130

Dr. Roper: I think the answer to that, Mr. Chairman, is that this attempt to circulate psychiatrists is an effort to find out who would be willing to take part in the program and also to set up a program which would be effective in a number of different ways. It would, I hope, be effective in finding out what sort of treatments were available throughout the country and eventually, perhaps after not too long a time, what the results of the different treatments were. Then, I think, after the passage of more time, these could be assessed and information could then go back out to the psychiatrists practising in the field that this treatment seems to be more effective than that, and so on.

Mr. Whelan: I gather from what you say that the average psychiatrist does not want to deal with drug addiction.

Dr. Roper: Well, I would not say that. If a psychiatrist were asked to co-operate in this problem and it was explained to him that facilities were being set up to bring information to him and to correlate information that he sent back to a central agency, I think a great number of psychiatrists would be only too willing to join in this co-operative attempt. I think at the moment some of them are feeling very lost in the drug abuse problem. They have no real backing of effective treatment information and I think we could provide this if we set up a properly organized program.

The Chairman: Mr. Honey and then Mr. Wahn.

Mr. Honey: Thank you, Mr. Chairman. Doctor, would it be accurate to say that psychiatrists dealing with the problem of drug addiction essentially are those who are on the staff of or accredited to hospitals, penitentiaries or other institutions where they are more or less specializing in the treatment of drug addicts?

Dr. Roper: I think it would be fair to say, Mr. Chairman, that the vast majority of recognized addicts are treated either in penitentiary or in hospitals, particularly special hospitals for this type of case, but I think there are also a great number of drug abusers who are being treated by family doctors, by psychiatrists and by other doctors. These persons may not be serious drug addicts yet but may well be on the road to becoming serious addicts and the front-line doctor, the family doctor and the psychiatrist to whom he refers these problems frequently, comprise the front-line area to which we could possibly offer greater assistance with some program we could set up.

Mr. Honey: Generally speaking, what would be the degree of addiction of the drug abuser, as you call him, who is consulting his family doctor or a psychiatrist in private practice? What drugs would he be using and to what extent would he be on the road to becoming a drug addict?

• 1135

Dr. Roper: The most common situation would be that of somebody who started on barbiturates, sleeping pills, perhaps a woman who was placed on some medicine to control her diet, and I think both these types of drugs would be the most common for a person to become addicted to in the initial stages.

Mr. Whelan: In this type of situation where a housewife or other person uses barbiturates or diet pills to the point where there is an addiction problem, is it normal for this person then to move into heroin or some other sort of drug? Do these people require other drugs or is there usually just an increasing use of the barbiturate or the diet drug?

Dr. Roper: There is an increasing risk of greater and greater addiction to greater quantities of the same drug that they started off with, or a move to more powerful drugs. These people are becoming a greater and greater risk of serious addiction.

Mr. Honey: You really are talking about that category of people. We also have the

addicted person who, by and large, I suppose is treated in an institution because at that point he does not have the desire to obtain medical or psychiatric assistance or the financial means to do so. Is that the situation?

Dr. Roper: Yes, I think it is a spectrum of addiction which we see starting off in a very innocent way and proceeding right through to the most serious heroin mainliner—the intravenous injection of heroin—and anywhere in this spectrum the person might stop. Of course, they might not; they might continue.

Mr. Honey: When a person gets to the stage where he is mainlining, is it correct that he is usually a case for institutional treatment?

Dr. Roper: Yes.

Mr. Honey: Because of financial limitations, if nothing else?

Dr. Roper: I think it is initially impossible to treat the serious drug addict—and I am thinking of the heroin addict particularly—as an out-patient. I know there has been evidence submitted to this Committee, Mr. Chairman, on this point, and I would say that any serious case of drug addiction—I am not limiting it to the heroin addiction—including barbiturates or any other drug, requires hospital care for at least an initial period, and then this is followed by an out-patient follow-up program.

Mr. Honey: I have one other point, Dr. Roper, and then I will be finished. In your evidence you said that you thought—if I recall correctly—it was important for all hospitals, and particularly those that are publicly maintained, to have facilities for the treatment of drug addicts or for people who are under the influence of drugs. Are you thinking of both types of patients, or essentially the person who is on the way to becoming an addict? Would the mainliner receive better treatment in a specialized institution than in a public hospital which had set up facilities to treat the serious addict?

• 1140

Dr. Roper: I do not think it really matters. I think the treatment facilities could be made available anywhere in any hospital, regardless of the extent of the addiction. The main problem is to have the treatment available. The kind of treatment will depend upon the

doctors on staff and the rules and regulations of the hospital. I feel it is wrong for the rules and regulations of any hospital to restrict the treatment programs unless there is a very good reason, but unfortunately, this does happen in drug addiction. Some hospitals have made the rule that no drug addict can be treated in their institution, although there may be members of the staff who would be willing and capable of doing so. I have known of doctors who have had to discharge patients against their better judgment because the hospital authorities made them do so.

I think this sort of thing is quite wrong. I think if we have treatment programs for drug addicts—and I think there are effective treatment programs of different types—then these should be made available anywhere in the country.

Mr. Honey: As a layman I could not express any professional opinion, but I agree it is regrettable that any public hospital would not provide facilities for the treatment of the drug abuser. I would like your opinion on whether or not it is fair to ask all public hospitals to provide the facilities for treating the serious addict. Would it not be more reasonable, when a person deteriorates to that point, to have that person treated in a hospital or an institution designed specifically for the treatment of those very serious cases?

Dr. Roper: I do not think you need to limit the serious addict—the heroin mainliner—to any particular type of institution. I have treated these people in open hospitals and the only factor which is really relevant is whether the doctor can give effective treatment. Effective treatment can be given in an open setting just as easily as in a custodial setting, if you have a program which is effective and the criterion really is on the treating physician. He must know the limits of his treatment program. If he says, "I am sorry, the treatment program that I envisage for this patient is not possible in an out-patient setting or in a general hospital setting", then his opinion should be accepted. If the patient is still to be treated by that doctor he will have to be treated in another setting.

On the other hand, you may find another physician who will be quite happy to treat this person. Perhaps he has a different tech-

nique, a different program altogether. He may say, "Oh yes, I can treat this patient in this particular hospital without any trouble". Fortunately there are these variations, of opinions by doctors and variations in treatment programs, because it is only in this way that we will find out which is the most effective.

Mr. Honey: Thank you very much.

Mr. Wahn: Dr. Roper, I believe you mentioned that there were effective treatment programs. Would those programs involve the gradual withdrawal and in the meantime the supply of drugs that are required by the patient?

• 1145

Dr. Roper: Yes, this could be the case. You can withdraw some drugs abruptly. If you withdraw them abruptly you can replace them with other medication. Treatment programs nowadays are designed not only to be effective but also to reduce the agony of withdrawal.

Mr. Wahn: There is nothing illegal then in administering drugs in the course of a treatment program?

Dr. Roper: No. The replacement drugs that I use are non-addictive.

Mr. Wahn: I believe evidence given previously before the Committee indicated—if my recollection is correct—that many addicts seem to recover, or at least get over the habit, almost without benefit of treatment when they reach a certain age. I recall this evidence being given on one occasion before this Committee. Is that in accordance with your experience? I have forgotten the age which was mentioned, but I think it was around 42 or 43, or thereabouts.

Dr. Roper: If I remember, Mr. Chairman, I think that referred to those who were not caught. Unfortunately the only figures we have on drug addiction are those that come to our attention from the police as a result of people being caught, the so-called street addict. There must be a tremendous number who are not caught. Whether as they get older they get wiser and they are less likely to get caught, or whether they are in fact no

longer addicted, I do not know. I certainly am sceptical of the figures when they relate only to people who are actually arrested.

Mr. Wahn: There is no reason to believe then that this is something that you can get over as you get older.

Dr. Roper: I have no evidence to support that addiction becomes less of a problem with time. All the evidence is that it becomes more of a problem. This is an unknown area in which we would very much like more information, and if we could set up some sort of program which would bring out this one item of information it would be very useful.

Mr. Wahn: Is it your experience that the percentage of drug addicts in the total population is increasing, or is there any evidence one way or the other?

Dr. Roper: I think there is considerable evidence that it is increasing.

Mr. Wahn: I believe evidence also has been given to the Committee that in many cases drug addicts are not inclined to crimes of violence, that any crimes in which they are involved would be usually for the purpose of getting money to provide drugs required by them. Is this in accordance with your experience?

• 1150

Dr. Roper: That is one type of crime but I think there is also the crime which is perpetrated under the influence of drugs for the sake of the pursuit of the crime. I think that the taking of goof balls before a bank robbery is well-known. I think that advantage is taken of drugs by criminal elements to try to make sure that people involved in the crime are in fact going to be able to go through with it. I have not any figures on this, of course, but I think generally speaking the effects of any of the drugs, at least those we are talking about, will make a person more liable to be involved in crime. It will reduce his ability to act upon his conscience. Whether he knows the difference between right and wrong in the first place, of course, in some circumstances is not always clear but certainly it decreases the responsibility of people. I think this goes back to an interesting story of

marijuana. The hashish which was used in the Middle Ages gave rise to the term "assassin", of course, and "hashish eater". These people were organized to assassinate people with the promise, of course, of adequate supplies of the drug. This clear-cut pattern is not obvious in our present society but when you have drug-taking going on I think you are going to get crime in a number of different ways.

Mr. Wahn: If an addict has a supply of drugs available to him is it possible for him to carry on and live a reasonably normal and productive life?

Dr. Roper: An addict can be maintained in a fairly reasonable state, depending on the individual's personality, the particular drugs he is taking, and the quantity of them. This will vary tremendously. Some people of course become quite insane with a small amount of drugs, others can take very large quantities and appear to behave normally. I think, whatever drug is being taken, there are effects on the individual, however strong their personality may be, which show that he is different from what he was before the drug-taking started. There is some sort of personality change, whether it is a blunting of the finer aspects of his personality or whether it is something which is more obvious which will vary from person to person. I think there must be, and there always is, some effect from drug-taking.

Mr. Wahn: You mentioned, Dr. Roper, that so far lasting results of treatment seem to be rather poor, in other words the curing of addiction does not seem to be too successful at the present time. Do any countries instead of perhaps trying to cure addiction, license the continued use of drugs by addicts so that they can get them at a reasonable price and carry on in a normal way?

Dr. Roper: I believe this was the situation in British Isles. A person could get supplies of drugs from his physician at a minimal charge. I am not quite sure of the situation now but this is certainly under review, if it has not been changed in the British Isles already, because there has been a great increase recently of drug addiction there. Of course there are some countries in the world

where there are few, if any, restrictions on drug-taking, and I think one can see the effects of this in opium dens of various countries of the Far East.

Mr. Wahn: Thank you very much, Mr. Chairman.

Mr. Gilbert: Mr. Chairman, I would like to ask Dr. Roper to go into more detail on the definition of drug addiction. You have pointed out the difficulty, Dr. Roper, of its definition and have sort of confined it to drug abuse. Most laymen understand drug addiction in its general sense, as you say, in the mainliner drugs such as heroin and opium, but the difficult areas are marijuana, LSD and some barbiturates. Is marijuana addictive?

• 1155

Dr. Roper: I think it is.

Mr. Gilbert: It is a very important question for young people today.

Dr. Roper: Mr. Chairman, I brought up the question of the term "drug addiction" because if one holds to it strictly it means a dependence on the drug both physiological and psychologically. It means that if you stop taking the drug suddenly, not only do you feel mentally sick but you have physical signs and symptoms: you perspire; you have the shakes; all sorts of things happen physically. Also, in order to keep your status quo you have to take more and more of the drug. However, we are finding that some of these drugs are not obviously showing these effects. When I say, "not obviously", they are perhaps showing the psychological effects. There is some change in the person's personality when he stops taking marijuana, and there is some change in these people when they stop taking LSD. The person who uses marijuana and LSD may want to take the drug more frequently, or may have a need to take it in larger doses. These are drugs which are difficult to fit into the classical definition of drug addiction, but they can be fitted into the term "drug abuse", and this is why I think it is easier to define drug abuse and easier to determine it. I think it might also cut down on the confusion which is caused in the community, because I have had a lot of patients

who said to me, "Marijuana is not addictive, it is harmless; it is as harmless as tobacco and alcohol". Well, it is not.

Mr. Gilbert: What about this problem of LSD? So many people say, "Well, we just cannot control it". It is so easily made. What measure of control can we exercise over something like LSD?

Dr. Roper: I think there has been a recent change in the LSD situation. I think there has been a lot of publicity about it in the last year or so, and at last people are beginning to realize how dangerous it is. I think this has made the youngster at risk particularly aware that he should not tinker around with this. There is also, of course, the fact that organized crime is avoiding LSD; it is not touching it. They will not let their pushers touch it. They want to push heroin which is the drug that they can get people on. They will not try to fly off the rooftop and get killed. They will stay alive, and they will keep up the demand.

Mr. Gilbert: Perhaps we should get to the pushers, Dr. Roper. What is your attitude towards these pushers? Should the law be strengthened on the "get tough" policy or should we pay heed to some of the studies that indicate the "get tough" policy just is not effective, because it drives them underground and makes it more difficult to detect them?

What is your attitude; what should we do to clear them out? You mentioned strengthening the hands of the police to break up the subculture of these addicts. I wonder what we should do about these pushers. Have you any ideas?

Dr. Roper: Yes, I think when a pusher is in business and is not addicted himself, the question of treatment does not necessarily arise unless something else is wrong with him. So I think these people, the suppliers and the organizers who are in the business, are the persons that the law should be aiming its sight at.

I have had patients who have become addicts, have been pushers and then have dropped their addictive habits and stayed as pushers. There is great flexibility in some people, as I said. There is a spectrum of addictive potential. Some people become addicted and then they can drop it; they get

in the sub-culture and, of course, there is an awful lot of money to be made, and they are aware of the risks.

• 1200

They know that pushing marijuana is more dangerous than pushing amphetamine because the law is stricter, so they will not touch marijuana. They can make more money with less risk pushing something else. If we are tough perhaps we can persuade some of these people that the thing is not worthwhile. I think this is certainly worthy of consideration.

Mr. Gilbert: That our Justice Department has directed their counsel to ask for jail terms for first offenders involved with LSD. What do you think of that approach? Here are young people charged for the first time faced with the recommendation by the Justice Department that they be given jail terms. Do you think that is wise in these circumstances?

An hon. Member: Is this a user?

Mr. Gilbert: Yes, the young user.

The Chairman: The solicitor who is in charge of the Department of Justice office in Toronto made that suggestion. I do not know whether it is a suggestion from the Department of Justice itself, but it comes through him at any rate.

Mr. Gilbert: You are probably correct.

The Chairman: He may only have been expressing a private opinion, that is what I mean.

Dr. Roper: If you would like me to comment on that I will say that the person who should be punished is the person who had criminal intent. I do not think it is fair, perhaps, to punish with a jail sentence a youngster who has been persuaded to take LSD because it is going to do him good.

The person who has done the persuading or the pushing should be the one who gets a jail term, or the parent who is responsible for the youngster and who knows about it and does nothing perhaps should have a night in jail to show him and the rest of the family, and the rest of the community, that this is not just playing around; there is something serious here and we should not allow this to go on.

An hon. Member: How about the swinging professor?

Dr. Roper: Two nights in jail for him, perhaps.

Mr. Gilbert: I am very sorry to be asking more questions, Mr. Chairman. If somebody else wants to ask questions I can continue on the second round.

The Chairman: I have a number of others, Mr. Gilbert.

Mr. Gilbert: I will conclude with just one more question. The evidence that we have heard, Dr. Roper, indicates that drug addiction is easily detected by a simple test and that most drug addicts are able to dry out within a very short period; I think some said 8 days to 2 weeks, probably through the use of methadone.

We have also had evidence, and you stated it this morning quite correctly, that in many cases drug addiction is the symptom of an underlying mental illness. You have talked about treatment, and if it only takes 2 weeks to dry a person out, then the next question is, just how do you treat him after that? Is it through group therapy, or supervision—you know, social health and climate? All these factors must play their part in Canada. All I am saying is that it is just not sufficient to dry a person out and say he is finished.

Dr. Roper: Yes, I agree that this is quite insufficient and I think this is shown by the figures; treatment of this nature seldom is successful. I think treatment of addiction is two-pronged. First of all you have to see whether there is an underlying illness; if there is you have to treat it and, at the same time, you have to treat the habit pattern.

We do this and have been doing it for many years with alcoholics. It is the same basic principle, I think, with any addiction. Now, just by drying a person out you have not done anything to the habit. The habit there is as ingrained as it was and for all his protestations of good faith that he is never going to succumb again, we know that, generally speaking, he will succumb. Perhaps he needs very little temptation to relapse, so we have to do something to treat the habit.

• 1205

Now this is being done, and there has been more and more evidence over the last 5 or 10 years that there are effective proven methods of changing habit patterns, including addiction.

Mr. Gilbert: Many thanks, Dr. Roper.

Mr. Klein: Dr. Roper, you stated that if the hospitals would co-operate to the extent of accepting drug addicts there would be sufficient centres for treatment.

Dr. Roper: Yes, but this is based on the availability of a treatment program in the hospital. There is no point in making a hospital accept a drug addict if they are not going to do anything with him, if they are just going to withdraw him and then discharge him. What we will have to do is to try to ensure that there are treatment facilities available now. Hospitals that have not had treatment facilities for drug addicts will be asked to set them up and they will be given advice and help as necessary to do this.

Mr. Klein: But in the event that they accepted this program, do you feel that there are sufficient institutional quarters to deal with the problem?

Dr. Roper: Yes.

Mr. Klein: I think psychologically there is now a *cliché* of the person who says: "Why cannot I do this? There is no law against it." This seems to be ingrained in the children. "I can do this; there is no law against it." In the program of allowing the drug user to purchase drugs, as in Great Britain, would that not encourage other people to feel that there is a sort of legalization of the use of drugs or "why can I not try it? There is no law against it." Would it encourage the non-user to use it?

Dr. Roper: Yes, I think so. I think this has been the result of a great deal of this publicity regarding LSD and marijuana that there is no harm in these things and that they may even do you good. This is the sort of information which we get fed back to us by youngsters who have been told this by people who they feel are responsible persons with some authority in the community, and this is a problem I think with which we are having an uphill struggle.

Mr. Klein: One of the witnesses who came before this Committee said that for the first time juvenile delinquency is no longer within the province of the underprivileged but is now appearing in the upper and middleclass strata of society, and this they attribute to the use of various drugs.

I shall preface my question with the statement that there seems to be a pattern in North America of the statement that marijuana is less dangerous than alcohol. It expands the mind. It is not addictive. It is less harmful than cigarettes. Even Robert Kennedy, on a program from New York, indicated that in his opinion—I do not know the exact words but he seemed to indicate that we are perhaps too tough on marijuana. It is a pattern that seems to exist uniformly across the country. I mentioned the swinging professors before. Do you feel that there is an uncontrolled...almost a conspiracy by the swinging professors who indicate to young students that they can take marijuana and have no fears about it? It seems to be widely spread. Have you had, in your experience, in your practice, indications that the young student was being influenced by the swinging professor?

• 1210

Dr. Roper: I do not think so much by the swinging professor as by the swinging fellow student. I think that a lot of youngsters are pushing marijuana. They are making money out of it. They do not feel it is harmful, although I did see a patient recently, a 17-year-old boy who had been sold marijuana by an 18-year-old girl who was pushing the stuff and who said to him: "Look, just have it once but do not take it again. I like you and I do not want you to get hooked." So she knew that the stuff was not as harmless as people are saying. I think there has been a great deal of harmful publicity, as I say, to the effect that there is no harm in it. I think this is changing. I think we see now, as more information is coming out from responsible people, that the warnings are being sounded just as they were with LSD a few months ago; now we are seeing more and more information about marijuana's being dangerous.

Mr. Klein: Doctor, is benzedrine a dangerous drug?

Dr. Roper: Yes.

Mr. Klein: It is.

Dr. Roper: Yes.

Mr. Klein: But was not benzedrine being given to our armed forces during the war?

Dr. Roper: Yes. It is an amphetamine derivative. It is a stimulant which was used in escape kits during the war. All escape kits had benzedrine in them so that you could stay awake for let us say two or three nights and try to escape from the enemy. We know that it is still used. It is still prescribed by doctors. It is also in some of these dietary pills that are given to people who want to lose weight. It can be dangerous because it can become addictive. Some people who are particularly sensitive to this drug can become insane from very small doses of it. I have seen a number of people who had to be committed to mental hospitals because of the effects of this drug. As I mentioned earlier, it is a drug which is being pushed a lot now because the legal fence of pushing it is not as great as with other drugs and it is very easy to produce and it commands a good price.

Mr. Klein: Is it still being used by the armed forces?

Dr. Roper: I do not know. It may still be in the escape kit. I do not know.

Mr. Klein: Doctor, I would like to ask just one more question. It seems to me that one statement that you make in your brief is that it would be very important if we could stop the person from taking the first puff. Is the user of marijuana a more apt recruit on his own initiative for other kinds of drugs?

Dr. Roper: Yes.

Mr. Klein: He is?

Dr. Roper: Yes.

Mr. Klein: You have stated in paragraph 9 (a):

Community efforts should continue in an effort to broadcast the dangers of drug abuse and combat the lax attitude towards it shown by some persons in authority

Is not one of the greatest dangers today at least in my observation it is—the lax attitude towards marijuana and other kindred drugs

shown by persons in authority? When doctors say it is not addictive and it is not harmful, I think this is what we have to combat perhaps even more, or at least with as great an intensity, as the pusher because although he is not a pusher, he is a psychological pusher.

Dr. Roper: Yes, I agree with that. We are, as I said, finding that the climate is apparently changing a bit now. There are a lot of people who are saying how dangerous it is to take marijuana and to take LSD and other drugs, and in my experience with the John Howard Society in Quebec we do as much as we can. We speak at various functions and we are, at the moment, organizing a program to go out to the parents and the school children to try to bring the dangers of this problem to the source of addiction, to the point where the people are most at risk and where we feel that knowledge would prevent a great deal of further trouble.

Mr. Klein: One last question, Mr. Chairman. In speaking to youngsters who take marijuana, and not only youngsters but even university professors, some doctors, but particularly youngsters, they seem to indicate that they who use marijuana think of the persons who are opposed to their using it as being, to use the vernacular, squares or misfits. Would you not say that the reverse is true and that the user of marijuana is really the misfit?

Dr. Roper: Yes, I would agree with that. He is not just a misfit because of his attitude but he may be a misfit because already the marijuana has brought about some change in his personality and possibly even some brain damage which might be permanent.

Mr. Klein: Thank you, Dr. Roper.

The Chairman: Mr. Forest, then Mr. Tolmie and Mr. Choquette.

Mr. Forest: Mr. Chairman, most of my questions already have been asked. You state in your brief that this bill or a change of legislation would not be very useful if we do not provide adequate medical facilities for the treatment of drug addicts and you say that the proper place for them is in a hospital rather than a penitentiary. How do you attack the problem? I believe you stated in answer

to Mr. Klein that there are adequate facilities now. Are there or are there not adequate facilities available?

Dr. Roper: There are enough hospitals available, but I think we would have to ensure that the hospital has a program for the treatment of addicts. This would depend on the doctors on the staff of the hospital having sufficient knowledge about treatment techniques. I think this could be organized.

Mr. Forest: What is the practice in Montreal now concerning treatment of drug addicts?

Dr. Roper: I think the treatment of drug addicts is impossible in some hospitals. They will not admit them and, as I said before, at one time I was ordered to discharge a patient from hospital because they did not want drug addicts in the hospital. They can be committed to a mental institution, but once again if the doctors on the staff have not got the information they are not encouraged, as it were, to become involved in a proper treatment program for drug addicts.

• 1220

I think the treatment, as we have heard from previous witnesses, often is a matter of withdrawal of the drug and then discharge and subsequent re-admission, a process which seems to continue indefinitely with some of these addicts. I think there is a possibility now if we could spread the information about effective treatment to all available hospitals where we could have effective programs available.

Mr. Forest: What about penitentiaries? You say that some still will revert to drugs after being incarcerated. Are there any provisions in penitentiaries in Montreal for the treatment of drug addicts?

Dr. Roper: I think the facilities there are even less than those available outside in other hospitals.

The Chairman: Mr. Tolmie?

Mr. Tolmie: Doctor, I understand there is a federal detention centre at Matsqui, British Columbia, for drug addicts. Do you know anything about the nature of the treatment at this centre, what success they have had

and do you think this type of institution should be the forerunner of other similar types?

We are talking about lack of facilities but here is a case in point where the government has established a particular detention centre for drug addicts. Is it working? I hear nothing about it.

Dr. Roper: The information I have about this centre is that they have not yet published any results of their treatment program. I have seen some published information about the American centre in Kennedy and I think the figures indicated that the treatment programs available were not very effective. The best results were when the patient was, in fact, in custodial care for quite a period of time. This may be because they had a firmer grip on the situation and they could keep him there as long as they considered necessary. Presumably the longer you can keep up a treatment program the better the results are likely to be.

I think setting up a unit like this is fine and I think it has its advantages, but certainly we want to know what the results are. We cannot set up enough of these centres in the country to deal with the present problem. It would take time and a great deal of money, in my opinion, I think we have the facilities now to do something. We could assess the comparative merits of a federal institution like the one you mentioned and these other means of treatment, and we could find out which is the best treatment program for certain types of patients in an on-going manner.

Mr. Tolmie: You are saying in effect that this institution has started, but to date there has been no evidence of whether it is successful and whether it should be continued.

Dr. Roper: That is all the information I have; I do not know the results of their treatment.

Mr. Tolmie: That is all.

The Chairman: Mr. Choquette?

[Translation]

• 1225

Mr. Choquette: Henri Bergson, a contemporary philosopher who died in 1941, wrote that we are living in an aphrodisiac civilization.

ater on I was reading the declaration of a
ritish psychiatrist who maintained that it
as becoming more and more difficult today
live without the help of stimulants, wheth-
they be cigarettes, liquor or even drugs.

Do you believe these remarks to be
extravagant? We must admit that modern life
much more agitated than it was in the past,
and that this necessarily affects the nervous
system. We are more and more obliged to
have recourse to forms of escapism and to
nd in drug mania, liquor, cigarettes or other
means a way of forgetting the normal obliga-
tions or our existence.

[English]

Dr. Roper: It is very difficult, of course, to
compare what we have in our present civiliza-
tion with times gone by. Man is the only
animal that seems to try to harm himself. I
do not think he does this intentionally; I
think perhaps he is more beset by worries
and problems and seeks relief in different
ways and some of these ways can be very
sophisticated and very dangerous.

I think this is an increasing problem in the
complexity of modern society and the availa-
bility of more and more ways of avoiding our
responsibilities, if you like, or avoiding
unpleasant situations. I think this is a prob-
lem of which we should be aware and, if
possible, take steps to try to get in front of it
and, as it were, make some plans so that the
situation does not get out of hand, and I think
the problem of drug addiction is a typical
one.

[Translation]

Mr. Choquette: Do you have any informa-
tion as to what substances, such as the stimu-
lants dexedrene and benzedrine, are used by
young people who do not have the means to
get a supply of drugs or pills? Have you
investigated whether cheaper methods used
have been brought to the attention of some
juvenile courts? I think this happened in
Quebec City. A net of young people were
discovered enacting the following procedure:
They were burning glue and sniffing the
fumes of this product.

• 1230

[English]

Dr. Roper: Yes, I think there are a lot of
ways of obtaining some sort of drug effect.
Actually if you need drugs you can usually

get them somehow or other, and it is surpris-
ing how easy it is to get them. A patient who
had just come out of a mental hospital, told
me just the other week it was easier to get her
illicit drugs in the ward there than it was
outside. I think it is fairly common knowl-
edge that all sorts of items can be used to
give some sort of drug effect. There is glue
sniffing, and various toxic chemicals are
available in hardware stores and other places
which are not actually drugs in the technical
sense. I think some hobos even eat boot pol-
ish because it is supposed to give them some
sort of a kick. They can prepare it in differ-
ent ways to give them more of a kick. It is
extraordinary the length to which the human
being will go to get something.

Now, what can we do about this sort of
thing? Well, I suppose all we can do is to try
to inform the people as much as possible of
the dangers of it, and to take what action we
can to prevent its being available, and to try
to help those who have got involved in it.

[Translation]

Mr. Choquette: Do you think that young
people between 16 and 25 years of age, for
instance, are really impressed with this phe-
nomenon? They do not believe in anything
anymore, and they consider life as an absurd
phenomenon from which they want to get
away. Would it be going too far to say that a
very high percentage of the younger genera-
tion are behaving in accordance with such a
philosophy?

[English]

Dr. Roper: I think they certainly make
more noise now than perhaps they used to. I
think the responsible young person—teenager
or young adult, is not heard because he says
something sensible and it is not news. I think
you hear a lot from the weirdos and the odd-
balls, and they can influence the borderline
person—the youngster who is, shall we say,
liable to accept some erroneous ideas about
life, about drugs, about anything. He will
accept some of these irresponsible ideas from
other sources. I think this borderline person
is the person we really should be aiming at,
because if we can get information to him at
the right time we can point out the error of
other persons' statements. It is not applicable
only to drug addiction, it is applicable to the
whole philosophy of life, I think.

Mr. Klein: May I ask you a supplementary question on that point? How can you do it when the generation you speak about worships The Beatles, and The Beatles are paid millions of dollars to appear? They went from that angle to LSD by their own admission, and then they wind up with the Maharishi. How can you do that, when we seem to be living in a society that is worshipping The Beatles?

I have said before that when I was on the campus the college hero was clean shaven, masculine and muscular. Today he is unkempt, feminine, and frail. How are you going to combat this thing when we seem to be living in a society where we are worshipping false idols; where they themselves who set themselves forth as the idols have to wind up, as I said, with the Maharishi?

• 1235

Mr. Whelan: Mr. Chairman, before the doctor answers, I do not think it is right to discuss whom the young people admire on the campuses today. I do not think they admire the unshaven and frail and feminine type of person there at all. I have seen in my own university that this is not true.

Mr. Klein: I hope you are right.

The Chairman: There may be some...

An hon. Member: Minority...

The Chairman: Yes.

An hon. Member: Vocal.

Mr. Klein: Well, I do not see the college hero as being the football star anymore.

An hon. Member: Oh, yes.

Mr. Klein: Well, I do not.

Dr. Roper: I think there are many aspects to this question.

The Chairman: Still with the older ones at any rate.

Dr. Roper: I think there are many aspects to that question. Without forecasting what is going to happen to The Beatles, certainly with some people we have seen who have been idols of the youth, and who have perhaps taken LSD or something, we see that they become fallen idols; that these people

are becoming sick and obviously mentally sick, even to their followers. I think this is making some of the youngsters sit up and realize that they have backed the wrong horse, that these people are, in fact, oddballs and they do not want to follow in the tracks.

The other aspect of it I suppose concerns the family. I think there has been a lot of concern expressed, quite rightly, about the role of the family in juvenile delinquency. We often find, of course, that the delinquent child, whether he is a drug taker or something else, comes from a home where there is not adequate authority and not the proper authority. Whether this is cause or effect, we do not know; it can be a mixture of both. Certainly I think that lack of guidance from somebody in authority, whether it is a father or a professor or an elder brother or somebody else that the person respects, is something very important. We have come across this time and time again in the drug addiction problem, that the person who can influence the youngster has not the knowledge or the information available so that he can say: "Well, this is dangerous" or "You must not do that." He does not know. Therefore if he does not know he cannot give the guidance.

The Chairman: Mr. Choquette.

[Translation]

Mr. Choquette: According to you, doctor, what is the psychological force which entices young people to consume narcotics? Would it be a need for self-assertion, a strong desire, the expression of a feeling of power?

[English]

Dr. Roper: It could be a number of different things. It could be anxiety; a person becomes anxious in a certain situation and seeks relief. They are like the person who cannot get to sleep because they are anxiously seeking relief and they get some sleeping pills. This may be the start of addiction. It may be that they do have a need for escape or they do have a need for feeling more confident or more powerful in certain situations, so they start this way. They may be influenced by others saying they will like it. And quite innocently they may start, although they may not need to. However, these people may be mentally sick even

before they start drugs; they may have some disorder which may make them think irrationally and this is how they start. There are many reasons. Each individual has to be investigated and treated differently.

• 1240

[Translation]

Mr. Choquette: Another question, Mr. Chairman. I only wanted to have you clarify your answer to my question. According to your information, do you believe that a good part of our youth is struck with a fear of responsibility to such an extent that it is looking for any kind of escape? According to your own information, is it characteristic of our epoch and does it apply to a great part of the young generation?

[English]

Dr. Roper: I think that the present young generation is different in many ways than those that have gone by, not different perhaps in makeup and personality but different in the situation they find themselves in. There is a much longer period now of education, there is a much longer period before they find gainful employment, and this means there is a much longer period of anxiety about what they are going to do in life, and a much longer period where they are vulnerable to all sorts of things. I suppose a student is the most suggestible person that we can find in the world apart from a child. I should think the young adult student is the most vulnerable to all sorts of suggestions and he is in a position where he just cannot help them.

[Translation]

Mr. Choquette: My last question, Mr. Chairman. The existence of H-bombs or atomic bombs—in other words, ways of instant destruction of the world—creates an atmosphere which did not exist in 1890. The young generation was born in this atmosphere, knowing well that we can blow up the world immediately. Do you think that this can have a psychological effect on the young?

[English]

Dr. Roper: It is said to have but I do not think it is really very different from the various stresses and strains experienced in previous times. I think the anxieties that the young people had in previous generations were just as great and perhaps a little bit nearer. There

were threats of invasion from across the border or some attack by troops that were antagonistic to them, and I think man has always had situations which created anxiety. The atomic bomb is almost in itself an anti-anxiety thing, because you say: "Well there is nothing I can do about it; if a bomb drops I have had it anyway, so I need not worry." But admittedly I think there is an aspect of it which is apparent in the youngster and somehow they blame the older generation for this situation. Perhaps this is very unfair because they do not suggest what else we could have done.

Mr. Choquette: May I conclude with a story, doctor. Two psychiatrists met on the street and one said to the other: "How are you?" The other said: "I really wonder what he meant by that."

The Chairman: That completes our questioning period, unless others have questions they would like to ask of Dr. Roper?

Dr. Roper: Could I make a little comment?

The Chairman: Yes certainly, I am sorry.

Dr. Roper: Mr. Chairman, there is just one comment I would like to make on this brief. I was speaking to Mr. Klein just before we met. It seems that if the Committee does decide to do something in this connection—and I have been thinking about trying to get something actually into action—it would be possible to organize a system along the lines I have mentioned here very easily. Perhaps one could have a secretary with an office, in the Department of National Health and Welfare, and someone who could act as an adviser. In the first year I would not mind trying to set something up so that we could get something organized in this way. I think it could be done very cheaply and very easily.

The Chairman: Thank you, Dr. Roper, and may I express the thanks of all members of the Committee for your appearance here today, for the information you have given to us, and for your complete answers to questions put by members of the Committee.

• 1245

Gentlemen, we have a communication from the Minister of Justice of the Province of Newfoundland and a further communication

from the Deputy Attorney General of British Columbia. The Minister of Justice of Newfoundland encloses for our information copies of the 1965 and 1966 health acts of Newfoundland which deal with the problem in sort of a minimal way. Similarly, the communication from British Columbia deals with the treatment of drug addicts by the British Columbia Provincial Institution. With your permission I would like to have these letters and the accompanying statements filed as exhibits. Is that agreeable?

Some hon. Members: Agreed.

The Chairman: We have also received—and I think all members have a copy—an article from Professor Mewett of Osgoode Hall dealing with the subject matter of compensation to persons who have suffered personal injuries from criminal acts. I would also like to have that filed as an exhibit in connection with the proceedings under Motion 20. Is that agreeable?

Some hon. Members: Agreed.

The Chairman: In conclusion I would like to say that we are expecting a report from

Mr. Stafford on the subject of bail. We have no other reference to this Committee and I do not anticipate we will have any further reference before the House recesses or prorogues. We will have to prepare our reports and that I think will probably complete the work of the Committee for this particular session.

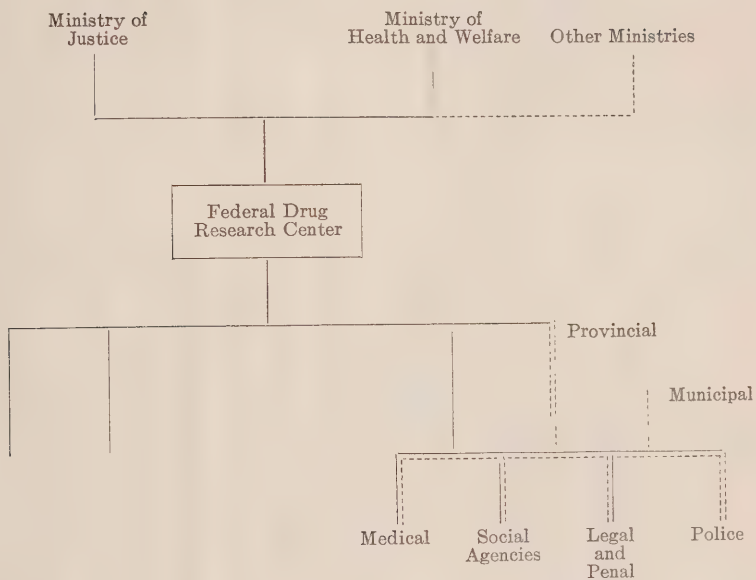
Mr. Gilbert: Would it be possible for the Committee to visit the narcotic clinic in Kentucky and the one in Matsqui, British Columbia during the recess?

The Chairman: The Steering Committee have not considered that suggestion. If anyone wants to express an opinion I would be glad to listen. Probably the Steering Committee can deal with your suggestion, if they think something should be done. Does anyone want to comment on Mr. Gilbert's suggestion?

An hon. Member: Yes, how do I get on the Committee?

The Chairman: If there are no other matters to come before the Committee we will stand adjourned to the call of the Chair.

APPENDIX "D"



INFORMATION ↑ ↓
FUNDING ↓

INFORMATION ONLY ↑ ↓

Form AI
CMHIA-1
(COMBINED FORM)
APPROVED BY
C.M.A., A.M.L.F.C., C.H.I.A.

DRUG ABUSE RESEARCH PROJECT
RESEARCH PHYSICIAN'S STATEMENT

PLEASE COMPLETE THIS CLAIM FORM AND RETURN IT TO YOUR PATIENT.
SEPARATE CLAIM FORMS OR ITEMIZED ACCOUNTS SHOULD BE SUBMITTED BY EACH ATTENDING DOCTOR.

1. Patient's code number		Age																																
2. Diagnosis (describe complications, if any)																																		
5. If hospitalized give name of hospital																																		
6. If referred to you, give name of referring source.																																		
7. Describe procedure(s) you performed (name of surgical assistant, if any; for 'Anaesthetic' give duration)		Date	19	Your Charge * \$																														
		Date	19	Your Charge * \$																														
		Date	19	Your Charge * \$																														
8. (a) Dates of visits (✓), exclusive of above procedures, (N) for night, holiday or emergency																																		
PLACE	MONTH	YEAR	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
AT OFFICE																																		
AT HOSPITAL																																		
AT HOME																																		

(b) Your total charge* for these visits—at office \$ hospital \$ home \$

GENERAL

RESEARCH TIME

LOSS OF TIME BENEFIT	9. (a) To the best of my knowledge, the patient has been totally disabled (unable to work) from 19 to 19 inclusive
	(b) If still disabled give approximate date patient should be able to return to work 19
INDIVIDUAL and GROUP COMPRE- HENSIVE MEDICAL POLICIES	10. How long was or will patient be partially disabled? From 19 to 19 inclusive
	11. When did patient first consult you for this condition? 19
	12. To the best of your knowledge (a) when did symptoms first appear or accident happen? 19
	(b) has patient ever had same or similar condition? If YES state when and describe
	13. Describe any other disease or infirmity affecting present condition
	REMARKS
DATE 19 Signature M.D. Certified Specialist?	
Street Address	City or Town Province
AUTHORIZATION OF PATIENT OR GUARDIAN	
I hereby authorize the release to my insurer and my employer of any information requested in respect of this claim.	
DATE	Signature of Patient or Guardian 19 *you have the option of inserting your charge or attaching itemized account

DRUG ABUSE RESEARCH PROJECT

STATISTICAL UNIT Statistical Information
ROP-1-65 PAGE 1

Form A2

Card Col. Code Information

01 NAME
02 (first four letters, converted to
03 numbers)
04
05
06
07
08
09 1st Init.
10
11 2nd Init.
12
13
14

I CARD NO. AGE—

1— 0-18
2—19-20
3—21-30
4—31-35
5—36-40
6—41-45
7—46-50
8—51-55
9—56 and up

SEX 1-M 2-F

MARIT. STAT.—

1—single
2—married
3—common law
4—widowed
5—divorced
6—separated
7—relig. ord.

ETHNIC BKG.—

0—Fr. Can.
1—Eng. Can.
2—USA
3—UK
4—Fr. Ben. Sw.
5—Scan. G. Aust.
6—It. Gr. Sp. Port.
7—Hung. Czec. Yug. Rum. Alb.
8—Russ. Ukr. Balt. Bulg.
9—Other

RELIGION—

1—Prot.
2—R.C.
3—Hebrew
4—Christian orthodox Ch.
5—Agnost. Atheist
6—Other

EDUC—

1—below Gr. 8
2—Gr. 8-11
3—University
4—Post-grad.

EMPL.—

1—self-empl.
2—Sr. Exec.
3—Jr. Exec.
4—office
5—manual
6—Sr. Professional
7—Jr. Professional
8—unempl.

DRUG—

1—Heroin
2—Opiates
3—Barbiturates
4—Amphetamines

Card Col. Code Information

21 (conc.)

5—Marihuana
6—Hallucinogens (incl. L.S.D.)
7—Toxic
8—Other

22

ABUSE DURATION—

1—0-3 months
2—3-12 months
3—1-5 yrs.
4—Over 5 yrs.

23

INVOLVEMENT—

1—Abuse only
2—Pusher
3—Trafficker
4—Peripheral
5—In possession
6—Import/Export
7—Cultivation/Production
8—Other

1—YES

2—NO

REFERRAL—

work
family
self
doctor
emergency
criminal
marital

FAMILY HIST.—

psychosis
neurosis
personality disorder
other deviations

PATIENT PREV. HIST.

PATIENT PREV. TREATMENT

SYMPTOMS—

anxiety
depression
obsession
confusion
delusion
physical complaint
excitement
sexual deviation
personality change

DURATION SYMPTOMS—

1—0-3 mos.
2—3-6 "
3—6-9 "
4—9-12 "
5—2 yrs.
6—3 "
7—4 "
8—5 "
9—longer

PRIMARY TREATMENT

(codes as follows)

SECONDARY TREATMENT—

psychotherapy (code 1)
ECT " 2
intensive treatment " 3
hypnosis " 4
Behaviour therapy " 5
tranquil. and drugs " 6
antidepressants " 7
family " 8
work change " 9

DRUG ABUSE RESEARCH PROJECT			Card	Col. Code	Information
STATISTICAL UNIT			65		SECONDARY DIAGNOSIS (conc.)
ROP-1-65			66		alcoholic (code 4)
Statistical Information			67		drugs " 5
PAGE 2			68		personality dev'n " 6
			69		sexual deviation " 7
			70		mental defect " 8
Card Col. Code Information					other " 9
DURATION TREATMENT—					FOLLOW-UP (codes)—
60	1-0-3	mos.			1-recovered
	2-3-6	"			2-improved
	3-6-9	"			3-unimproved
	4-9-12	"			4-worst
	5-2	yrs.			5-disch. against advice
	6-3	"			6-transferred
	7-4	"	71		7-died
	8-5	"	72		up to 3 months
	9-longer		73		6 "
PRIMARY DIAGNOSIS—			74		9 "
(codes as follows)			75		12 "
61	SECONDARY DIAGNOSIS—		76		18 "
	(code 1)		77		2 years
62	organic	(code 1)	78		3 "
63	psychotic	" 2	79		4 "
64	neurotic	" 3	80		5 "
					more than 5 "

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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Translated by the General Bureau for Translation, Secretary of State.

ALISTAIR FRASER,
The Clerk of the House.

HOUSE OF COMMONS

Second Session—Twenty-seventh Parliament

1967-68

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. CAMERON

PROCEEDINGS

No. 18



THURSDAY, MARCH 14, 1968

RESPECTING

The subject-matter of Bill C-96,
An Act respecting observation and treatment of drug addicts.

INCLUDING FOURTH REPORT TO THE HOUSE
(respecting the subject-matter of Bill C-96)

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1968

STANDING COMMITTEE

ON

JUSTICE AND LEGAL AFFAIRS

Chairman: Mr. A. J. P. Cameron (*High Park*)

Vice-Chairman: Mr. Yves Forest

and

Mr. Aiken,
Mr. Cantin,
Mr. Choquette,
Mr. Gilbert,
Mr. Goyer,
Mr. Grafftey,
Mr. Guay,
Mr. Honey,

Mr. Howe
(*Hamilton South*),
Mr. Latulippe,
Mr. MacEwan,
Mr. McCleave,
Mr. McQuaid,
Mr. Nielsen,
Mr. Otto,

Mr. Pugh,
Mr. Ryan,
Mr. Stafford,
Mr. Tolmie,
Mr. Wahn,
Mr. Whelan,
Mr. Woolliams—(24).

(Quorum 8)

Hugh R. Stewart,
Clerk of the Committee.

ORDER OF REFERENCE

HOUSE OF COMMONS,
MONDAY, June 26, 1967.

Ordered,—That the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts, be referred to the Standing Committee on Justice and Legal Affairs.

Attest:

LÉON-J. RAYMOND,
The Clerk of the House of Commons.

REPORT TO THE HOUSE

FRIDAY, March 15, 1968.

The Standing Committee on Justice and Legal Affairs has the honour to present its

FOURTH REPORT

Your Committee had referred to it the subject-matter of Bill C-96, An Act respecting observation and treatment of drug addicts.

In considering the subject-matter of this Bill, your Committee held nine formal meetings from October 31, 1967 to March 14, 1968.

The following witnesses were heard during the formal proceedings:

Mr. Milton L. Klein, M.P., Sponsor of Bill C-96.

Dr. J. Gregory Fraser, Director, Narcotic Addiction Unit, Alcoholism and Drug Addiction Research Foundation, Toronto.

Dr. James Naiman, Assistant Professor of Psychiatry, McGill University, Montreal.

Miss Isabel J. Macneill, Clinical Research Associate, Alcoholism and Drug Addiction Research Foundation, Toronto.

Dr. B. Cormier, Associate Professor, Department of Psychiatry, McGill University, Montreal.

Dr. Daniel Craigen, Medical Specialist (Psychiatrist), Matsqui Institution, Canadian Penitentiary Service, Abbotsford, B.C.

Dr. J. Robertson Unwin, Director, Adolescent Service, Allan Memorial Institute, Montreal.

Dr. Peter Roper, President, The John Howard Society of Quebec Incorporated, Montreal.

The following documents were printed as an appendix to the Minutes of Proceedings and Evidence:

Sample forms and statistics attached to Dr. Peter Roper's briefing on February 27, 1968.

The following documents were filed as exhibits:

Article entitled Methadone—Fighting Fire With Fire, by Gertrude Samuels, The New York Times Magazine, October 15, 1967.

Extracts from Dr. Donald Louria's book entitled Nightmare Drugs, pages 78 to 94.

Article by Dr. Vincent P. Dole and Dr. Marie Nyswander, entitled Heroin Addiction—A Metabolic Disease, which appeared in the Archives of Internal Medicine, July 1967, Volume 120.

The Pilot Treatment Unit: The First Seven Month Developmental Program In The Treatment of The Narcotic Addict.

The Pilot Treatment Unit: A Preliminary Report Of Treatment Research—Program II: An Experimental Treatment Program For The

Narcotic Addict. (by D. Craigen; D. R. McGregor; B. C. Murphy, Canadian Penitentiary Service, Department of the Solicitor General).

Submission To The Prevost Commission On The Administration Of Justice In Matters Related To Crime And Penology In The Province Of Quebec By The John Howard Society of Quebec, Incorporated—September 1967.

A Case for Cannabis? (An Article in the British Medical Journal, 29 July 1967, p. 258; and 5 Letters to the Editor on the same subject; 1 on 5 August, 1967, p. 367, 2 on 12 August 1967, p. 435, 2 on 26 August 1967, p. 504).

Afternoon of an Addict (An Article in the Waiting Room Digest, September-October 1967, p. 2).

Drug Addiction, Psychotic Illness and Brain Stimulation: Effective Treatment and Explanatory Hypothesis (An Article by Peter Roper, M.B., Ch.B., D.P.M., and reprinted from The Canadian Medical Association Journal 95: 1080-1086, November 19, 1966).

Brief dated November 5, 1967, submitted by Inmate No. 3941, F. Walch, of the Kingston Penitentiary.

Letters from the Province of Ontario dated January 5, January 18 and March 8, 1968, from the Province of Saskatchewan dated January 15 and January 19, 1968, from the Province of Nova Scotia dated January 15, 1968, and from the Province of Prince Edward Island dated January 12, 1968, concerning the facilities available in these Provinces for the treatment of drug addicts.

Illicit Drugs Currently In Use Among Canadian Youth (A Review Article by J. Robertson Unwin, M.B., B.S., M.Sc., D.P.M., D.Psycht., C.R.C.P. (C) presented for publication in the Canadian Medical Association Journal, 1968).

Letters from the Province of Newfoundland dated January 24, 1968 and from the Province of British Columbia dated February 6, 1968, concerning the facilities available in these Provinces for the treatment of drug addicts.

Your Committee recognized the extent of the problem envisaged by the Sponsor of the Bill and its own inability to give the subject-matter the extended and thorough study demanded.

From the evidence adduced before the Committee, there is no doubt a narcotic addict is not per se a criminal, but is a sick man and should be treated as such. The criminal law makes no provision for this fact, and the only remedy open to the courts is to sentence to jail anyone found illegally in possession of a drug.

Instead of a jail sentence, a narcotic addict should receive medical treatment. The fact is that there are only limited facilities available and the alternative is a prison sentence. This is wrong and your Committee recommends:

1. That treatment be substituted for punishment;
2. That drug addiction be recognized primarily as an illness;
3. That the stigma of criminal conviction be avoided wherever possible, in the case of the drug addict or drug addiction; particularly, in the case of the first offender and the young offender;

4. That the judge or magistrate before whom the accused appears on a narcotic charge should be given the discretion after he has determined that the accused is a user of narcotics, to refer the matter to an appropriate agency for treatment and rehabilitation of the accused and depending upon the progress and recommendations made in each case, to adjourn the hearing from time to time or sine die, as the case may be. (A suspended hearing is a greater deterrent than a suspended sentence). Consideration should be given to extending this principle to other charges involving a narcotics user where narcotics is part of the reason for the commission of the alleged offence. In the interest of rehabilitation, no publication of the name of any such person accused under the legislation be made without the consent of the judge.

IT IS FURTHER RECOMMENDED:

That a Federal-Provincial Conference of the Minister of Justice of Canada and all Provincial Attorneys General be convened to study the aforesaid proposals at an early date and, more particularly, to provide for the establishment of adequate facilities for the treatment and rehabilitation of drug addicts as well as the enlistment of practising psychiatrists and other qualified personnel for a crash program against this great evil.

IT IS FURTHERMORE RECOMMENDED:

That in view of the anxiety of the parents of high school and college students and public confusion as to the use of marijuana, LSD and other hallucinatory drugs of which so little is known and which seems to have reached alarming proportions in high schools and colleges of the country, the Federal-Provincial Conference above-mentioned should set up an appropriate agency with specific powers to look into the problem of the use of marijuana, LSD and other hallucinogenic drugs and make appropriate recommendations.

A copy of the Minutes of Proceedings and Evidence relating to the subject-matter of Bill C-96 (*Issues Nos. 4, 10, 11, 12, 13, 15, 17, 18*) is tabled.

Respectfully submitted,

A. J. P. CAMERON,
Chairman.

MINUTES OF PROCEEDINGS

THURSDAY, March 14, 1968.

(20)

The Standing Committee on Justice and Legal Affairs met *in camera* at 10.15 a.m. this day. The Chairman, Mr. Cameron (*High Park*), presided.

Members present: Messrs. Cameron (*High Park*), Cantin, Gilbert, Guay, Honey, McCleave, McQuaid, Tolmie, Wahn and Mr. Whelan—(10).

The members considered a draft Report to the House, respecting the subject-matter of *Bill C-96, An Act respecting observation and treatment of drug addicts*. Certain amendments were agreed to and the report, as amended, was adopted.

Members noted that the Committee had received a letter dated March 8, 1968 from the Deputy Attorney-General of Ontario. It describes facilities available in Ontario for the treatment of drug addicts. The Committee agreed to file the letter as an Exhibit (*Exhibit C-96-14*).

It was ordered that the Chairman should present the draft report adopted at this meeting as the Fourth Report of the Standing Committee on Justice and Legal Affairs.

The Committee adjourned at 11.00 a.m., to the call of the Chair.

Hugh R. Stewart,
Clerk of the Committee.

OFFICIAL REPORT OF MINUTES
OF
PROCEEDINGS AND EVIDENCE

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ALISTAIR FRASER,
The Clerk of the House.

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